

OFFICIAL CODE
OF
GEORGIA
—
ANNOTATED



VOLUME 38

Title 49 Social Services

Title 50 State Government
Chapters 1-12

2013 Edition

KFG30 1981 .A24

Georgia

Official code of Georgia
annotated

2013 v. 38 c.4

MERCER UNIVERSITY

AUG 20 2013

FURMAN SMITH
LAW LIBRARY



Digitized by the Internet Archive
in 2019 with funding from
Public.Resource.Org

OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 38 **2013 Edition**

Title 49. Social Services

Title 50. State Government
Chapters 1-12

Including Acts of the 2013 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

LexisNexis®

Charlottesville, Virginia

2013

MERCER UNIVERSITY

AUG 20 2013

FURMAN SMITH
LAW LIBRARY

Georgia
KFG30
1981
.A24
2013
v. 38
C.4

COPYRIGHT 1926 THROUGH 1930
© 1982, 1986, 1990, 1994, 1998, 2002, 2006, 2009, 2013

BY
STATE OF GEORGIA

All rights reserved.

ISBN 978-0-7698-6390-0

419641602



OFFICE OF SECRETARY OF STATE

**I, Brian P. Kemp, Secretary of State of the
State of Georgia, do hereby certify that**

the statutory portion of the Official Code of Georgia Annotated contained
in this volume is a true and correct copy of such material as enacted by
the General Assembly of Georgia; all as same appear of file and record in
this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of my office, at the Capitol, in the City of Atlanta, this
28th day of June, in the year of our Lord Two Thousand and
Thirteen and of the Independence of the United States of
America the Two Hundred and Thirty-Seventh.

B. P. Kemp

Brian P. Kemp, Secretary of State

Preface

Volumes 38 and 38A cumulate and replace the 2009 edition of Volume 38 of the Official Code of Georgia Annotated, as supplemented by the 2012 Cumulative Supplement. The 2009 Volume 38 and its supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 49 and Title 50 (Chapters 1-12) by the General Assembly through the 2013 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2011, 2012, and 2013 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2011 Session of the General Assembly, the user should consult the Georgia Laws.

Visit our website at <http://www.lexisnexus.com> for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please call toll free 1-800-833-9844, fax at 1-518-487-3584, or email us at customer.support@lexisnexis.com. Direct written inquiries to:

LexisNexis®
Attn: Official Code of Georgia Annotated
701 East Water Street
Charlottesville, Virginia 22902-5389

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

Table of Titles

Title	1. General Provisions.
	2. Agriculture.
	3. Alcoholic Beverages.
	4. Animals.
	5. Appeal and Error.
	6. Aviation.
	7. Banking and Finance.
	8. Buildings and Housing.
	9. Civil Practice.
	10. Commerce and Trade.
	11. Commercial Code.
	12. Conservation and Natural Resources.
	13. Contracts.
	14. Corporations, Partnerships, and Associations.
	15. Courts.
	16. Crimes and Offenses.
	17. Criminal Procedure.
	18. Debtor and Creditor.
	19. Domestic Relations.
	20. Education.
	21. Elections.
	22. Eminent Domain.
	23. Equity.
	24. Evidence.
	25. Fire Protection and Safety.
	26. Food, Drugs, and Cosmetics.
	27. Game and Fish.
	28. General Assembly.
	29. Guardian and Ward.

TABLE OF TITLES

30. Handicapped Persons.
31. Health.
32. Highways, Bridges, and Ferries.
33. Insurance.
34. Labor and Industrial Relations.
35. Law Enforcement Officers and Agencies.
36. Local Government.
37. Mental Health.
38. Military, Emergency Management, and Veterans Affairs.
39. Minors.
40. Motor Vehicles and Traffic.
41. Nuisances.
42. Penal Institutions.
43. Professions and Businesses.
44. Property.
45. Public Officers and Employees.
46. Public Utilities and Public Transportation.
47. Retirement and Pensions.
48. Revenue and Taxation.
49. Social Services.
50. State Government.
51. Torts.
52. Waters of the State, Ports, and Watercraft.
53. Wills, Trusts, and Administration of Estates.

In Addition, This Publication Includes

Constitution of the United States

Constitution of the State of Georgia

Tables of Comparative Sections

Table of Acts

Index to Local and Special Laws

TABLE OF TITLES

Index to General Laws of Local Application
Short Title Index
General Index

Table of Contents

VOLUME 38

TITLE 49

SOCIAL SERVICES

CHAPTER	PAGE
1. General Provisions, 49-1-1 through 49-1-9	2
2. Department of Human Services, 49-2-1 through 49-2-25 ..	9
3. County and District Departments, Boards, and Directors of Family and Children Services, 49-3-1 through 49-3-8	37
4. Public Assistance, 49-4-1 through 49-4-193	46
4A. Department of Juvenile Justice, 49-4A-1 through 49-4A-18	171
5. Programs and Protection for Children and Youth, 49-5-1 through 49-5-281	205
6. Services for the Aging, 49-6-1 through 49-6-86	328
7. Family-Planning Services, 49-7-1 through 49-7-9	350
8. Economic Rehabilitation Services, 49-8-1 through 49-8-7	354
9. Transfer of Division of Rehabilitation Services to Depart- ment of Labor, 49-9-1 through 49-9-42	358
10. Georgia Board for Physician Workforce, 49-10-1 through 49-10-6	378

TITLE 50

STATE GOVERNMENT

1. General Provisions, 50-1-1 through 50-1-9	386
2. Boundaries and Jurisdiction of the State, 50-2-1 through 50-2-28	395
3. State Flag, Seal, and Other Symbols, 50-3-1 through 50-3-100	420
4. Organization of Executive Branch Generally, 50-4-1 through 50-4-7	446
5. Department of Administrative Services, 50-5-1 through 50-5-202	453

TABLE OF CONTENTS

CHAPTER	PAGE
5A. Office of State Treasurer, 50-5A-1 through 50-5A-11	538
5B. State Accounting Office, 50-5B-1 through 50-5B-24	548
6. Department of Audits and Accounts, 50-6-1 through 50-6-32	555
7. Department of Economic Development, 50-7-1 through 50-7-80	573
8. Department of Community Affairs, 50-8-1 through 50-8-242	601
9. Georgia Building Authority, 50-9-1 through 50-9-111	704
10. Georgia Development Authority, 50-10-1 through 50-10-10	730
11. State Law Library, 50-11-1 through 50-11-10 [Repealed] ...	741
12. Commissions and Other Agencies, 50-12-1 through 50-12-147	742
Index to Title 49	787
Index to Title 50 contained in Volume 38A	

VOLUME 38A

13. Administrative Procedure, 50-13-1 through 50-13-44	
13A. Tax Tribunals, 50-13A-1 through 50-13A-20	
14. Open and Public Meetings, 50-14-1 through 50-14-6	
15. Public Lawsuits, 50-15-1 through 50-15-4	
16. Public Property, 50-16-1 through 50-16-183	
17. State Debt, Investment, and Depositories, 50-17-1 through 50-17-105	
18. State Printing and Documents, 50-18-1 through 50-18-135	
19. Transportation Services, 50-19-1 through 50-19-26	
20. Relations With Nonprofit Contractors, 50-20-1 through 50-20-8	
21. Waiver of Sovereign Immunity as to Actions Ex Contractu; State Tort Claims, 50-21-1 through 50-21-37	
22. Managerial Control Over Acquisition of Professional Services, 50-22-1 through 50-22-9	
23. Environmental Finance Authority, 50-23-1 through 50-23-35	

TABLE OF CONTENTS

CHAPTER

24. Drug-free Workplace, 50-24-1 through 50-24-6
25. Georgia Technology Authority, 50-25-1 through 50-25-16
26. Housing and Finance Authority, 50-26-1 through 50-26-22
27. Lottery for Education, 50-27-1 through 50-27-104
28. State Productivity Council, 50-28-1 through 50-28-5 [Repealed]
29. Information Technology, 50-29-1 through 50-29-12
30. Institute for Community Business Development, 50-30-1 through 50-30-6 [Repealed]
31. Georgia Suggestion System, 50-31-1 through 50-31-7 [Repealed]
32. Georgia Regional Transportation Authority, 50-32-1 through 50-32-71
33. Year 2000 Readiness, 50-33-1 through 50-33-6 [Repealed]
34. OneGeorgia Authority, 50-34-1 through 50-34-18
35. Georgia Environmental Training and Education Authority, 50-35-1 through 50-35-13 [Repealed]
36. Verification of Lawful Presence Within United States, 50-36-1 through 50-36-4
37. Guaranteed Energy Savings Performance Contracting, 50-37-1 through 50-37-8

TITLE 49

SOCIAL SERVICES

Chap.

1. General Provisions, 49-1-1 through 49-1-9.
2. Department of Human Services, 49-2-1 through 49-2-25.
3. County and District Departments, Boards, and Directors of Family and Children Services, 49-3-1 through 49-3-8.
4. Public Assistance, 49-4-1 through 49-4-193.
- 4A. Department of Juvenile Justice, 49-4A-1 through 49-4A-18.
5. Programs and Protection for Children and Youth, 49-5-1 through 49-5-281.
6. Services for the Aging, 49-6-1 through 49-6-86.
7. Family-Planning Services, 49-7-1 through 49-7-9.
8. Economic Rehabilitation Services, 49-8-1 through 49-8-7.
9. Transfer of Division of Rehabilitation Services to Department of Labor, 49-9-1 through 49-9-42.
10. Georgia Board for Physician Workforce, 49-10-1 through 49-10-6.

Cross references. — Adoption, T. 19, services in individuals' homes, § 31-7-150
C. 8. Regulation of agencies providing et seq.
physical therapy, nursing care, and other

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
49-1-1.	Definitions.		county board member, county director, or employee or official of department.
49-1-2.	Compliance of county departments with rules and regulations of the Department of Human Services.	49-1-6.	Transfer of assets of nonprofit corporation to department.
49-1-3.	Power of Governor to reorganize state and local health and welfare organizations; appointment of district health and welfare directors and staff [Repealed].	49-1-7.	Home delivered meals, transportation, services for the elderly, and preschool children with special needs fund.
49-1-4.	Sales by administrators to institutions prohibited.	49-1-8.	Sales of surplus products of institutions; disposition of proceeds [Repealed].
49-1-5.	Suspension and removal of	49-1-9.	Redesignated.

49-1-1. Definitions.

As used in this title, the term:

- (1) “Board” means the Board of Human Services.
- (2) “Commissioner” means the commissioner of human services.
- (3) “County board” means a county or district board of family and children services.
- (4) “County department” means a county or district department of family and children services.
- (5) “County director” means the director of a county or district department of family and children services.
- (6) “Department” means the Department of Human Services. (Ga. L. 1937, p. 355, § 1; Ga. L. 1960, p. 85, § 1; Ga. L. 1963, p. 218, § 1; Ga. L. 1972, p. 1015, §§ 1201, 1203, 1204, 1215; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-1-2. Compliance of county departments with rules and regulations of the Department of Human Services.

All rules and regulations made by the Department of Human Services shall be binding on the counties and shall be complied with by the respective county departments. (Ga. L. 1937, p. 311, § 4; Ga. L. 1937, p. 568, § 5; Ga. L. 1937, p. 630, § 4; Ga. L. 1952, p. 15, § 4; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Administrative rules and regulations. — Temporary assistance for needy families (TANF) programs, Official Compilation of the Rules and Regulations of

the State of Georgia, Department of Human Resources, Family and Children Services; Child Care Institutions, Chapter 290-2-28.

49-1-3. Power of Governor to reorganize state and local health and welfare organizations; appointment of district health and welfare directors and staff.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 1211, § 1; Ga. L. 1976, p. 685, §§ 1, 2.

49-1-4. Sales by administrators to institutions prohibited.

No individual, supervisor, or member of the Board of Human Services or the county or district boards of family and children services having to do with the administration of this title shall be authorized or permitted, directly or indirectly, to sell supplies or other items of any kind or character to any of the institutions to be benefited by this title. (Ga. L. 1937, p. 355, § 20A; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-1-5. Suspension and removal of county board member, county director, or employee or official of department.

(a) In order that the public welfare laws of this state may be better enforced, the Governor is authorized and empowered to suspend any member of any county board, any county director, or any employee or official of the department whenever he or she shall find that good cause for such suspension exists. Such suspension shall be by executive order of the Governor, which shall state the reason therefor. A copy of such order of suspension shall be sent to the person so suspended within five days after it is issued, by registered or certified mail or statutory overnight delivery, return receipt requested, together with a notice from the Governor or his or her executive secretary that the suspended person may be heard before the Governor at such time as may be stated in the notice, which hearing shall be not less than ten nor more than 20 days from the date of the notice. Upon such hearing, if the Governor shall find that good cause for the removal of the person so suspended exists, he or she is authorized and empowered to remove such member of any county board, any county director, or any employee or official in the department; whereupon, such person's tenure of office or employment shall terminate, subject to the right of appeal granted to any employee by or under authority of Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. If the Governor shall find that

good cause for the removal of such person does not exist, he or she shall, by appropriate executive order, restore him or her to duty.

(b) In addition to removal by the Governor as specified in subsection (a) of this Code section, the director of the Division of Family and Children Services may terminate the employment of any county director or district director subject to any right of appeal granted to such terminated director by or under the authority of Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. (Ga. L. 1941, p. 485, § 3; Ga. L. 2000, p. 240, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-93/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “by or under authority of Chapter 20 of Title 45” for “under the State Personnel Administration by Chapter 20 of Title 45” in the next-to-last sentence of subsection (a); and substituted “granted to such terminated director by or under the authority of Chapter 20 of Title 45” for “such director may have under the State Personnel Administration by Chapter 20 of Title 45” near the middle of subsection (b).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

RESEARCH REFERENCES

ALR. — Conclusiveness of governor’s decision in removing or suspending officers, 92 ALR 998.

49-1-6. Transfer of assets of nonprofit corporation to department.

(a) Any charitable or nonprofit corporation which has been granted a charter or articles of incorporation under the laws of this state may transfer all or a part of its assets to the department upon such terms as may be agreed upon between such corporation and the department, provided such corporation shall first have obtained authority to make such transfer in accordance with this Code section.

(b) Any such corporation may apply for authority to make such transfer by filing its petition with the superior court of the county in which such corporation has its principal office. Such application shall set forth the assets which the corporation desires to transfer to the

department and the terms upon which it desires to transfer these assets.

(c) Such corporation, once a week for four weeks prior to the filing of such petition, shall publish notice in the newspaper of the county in which is located the principal office of the corporation, such newspaper being the newspaper in which notices of sheriff's sales are advertised. The notice shall set forth the date, time, and place when such application will be presented, the court to which it will be presented, and the assets which such corporation desires to transfer to the department.

(d) After a hearing, the court shall be authorized to grant the application and permit a transfer of the assets of the applicant upon terms as set out in the application or modified as the court may deem advisable, if the court considers this in the public interest; or the court may deny the application if the court deems such denial to be in the public interest. Where such corporation makes a transfer of all of its right, title, and interest in any of its assets to the department and such transfer is made pursuant to the authority of the court obtained in the manner provided for in this Code section, such transfer shall be conclusively deemed to be a proper and legal transfer.

(e) Should such corporation desire to transfer all of its assets to the department, the court to which such application is presented may include in its order a provision that upon the transfer by such corporation of all of its assets to the department and upon compliance with Chapter 3 of Title 14, the charter or articles of incorporation of such corporation shall stand surrendered and the corporation dissolved.

(f) Nothing contained in this Code section shall be considered as authorizing the department to accept a transfer of assets upon terms which would require the use of them by the department in a manner not authorized by law. (Ga. L. 1952, p. 97, §§ 1-6; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-1-7. Home delivered meals, transportation, services for the elderly, and preschool children with special needs fund.

(a) The General Assembly finds that it is in the best interest of the state to provide for programs for home delivered meals, transportation services for the elderly, and preschool children with special needs, including but not limited to disabled children, troubled children, school readiness programs, and other similar needs for the benefit of the citizens of Georgia. In addition to and as a supplement to traditional financing mechanisms for such programs, it is the policy of this state to enable and encourage citizens voluntarily to support such programs.

(b) To support programs for home delivered meals, transportation services for the elderly, and preschool children with special needs which

programs have been established or approved by the department or the Department of Community Health, the department may, without limitation, promote and solicit voluntary contributions through the income tax return contribution mechanism established in subsection (f) of this Code section, through offers to match contributions by any person with moneys appropriated or contributed to the department or the Department of Community Health for such programs, or through any fund raising or other promotional techniques deemed appropriate by the department or the Department of Community Health.

(c) There is established a special fund to be known as the “Home Delivered Meals, Transportation Services for the Elderly, and Preschool Children with Special Needs Fund.” This fund shall consist of all moneys contributed under subsection (b) of this Code section, all moneys transferred to the department under subsection (f) of this Code section, and any other moneys contributed to this fund or to the home delivered meals, transportation services for the elderly, or preschool children with special needs programs of the department or the Department of Community Health and all interest thereon. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The fund shall be administered and the moneys held in the fund shall be expended by the department through the Division of Aging Services in furtherance of home delivered meals and transportation services to the elderly programs and by the Department of Community Health in furtherance of preschool children with special needs programs.

(d) Following the transmittal of contributions to the department for deposit in the fund pursuant to subsection (f) of this Code section, the expenditure of moneys in the fund shall be allocated as follows:

(1) Fifty percent of the contributions to the fund shall be used for home delivered meals and transportation services to the elderly programs; and

(2) Fifty percent of the contributions to the fund shall be transferred to the Department of Community Health to be used for preschool children with special needs programs.

(e) Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. Contributions shall only be used for benefits and services and shall not be used for personnel or administrative positions. The department and the Department of Community Health shall each prepare, by February 1 of each year, an accounting of the funds received and expended from the fund and a review and evaluation of all expended moneys of the fund. The reports shall be made available to

the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, to the members of the Board of Human Services, and, upon request, to members of the public.

(f)(1) Unless an earlier date is deemed feasible and established by the Governor, each Georgia income tax return form for taxable years beginning on or after January 1, 1993, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Home Delivered Meals, Transportation Services for the Elderly, and Pre-school Children with Special Needs Fund established in subsection (c) of this Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to such fund may designate such contribution as provided in this Code section on the appropriate income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the department for deposit in the fund established in subsection (c) of this Code section; provided, however, that the amount retained for administrative costs, including implementation costs, shall not exceed \$50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions. (Code 1981, § 49-1-9, enacted by Ga. L. 1992, p. 3241, § 1; Code 1981, § 49-1-7, as redesignated by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "Resources (now Services)" in the last sentence of subsection (e).

Pursuant to Code Section 28-9-5, in 2009, "that" was inserted following "however," in the first sentence of paragraph (f)(2).

Administrative rules and regulations. — The Georgia Children and El-

derly Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the Children's Trust Fund Commission, Grant Program, § 98-1-.02.

Editor's notes. — Former Code Section 49-1-7 (Ga. L. 1946, p. 45, § 1; Ga. L. 1960, p. 85, § 3; Ga. L. 1963, p. 218, § 7), relating to the purchase of adjacent lands for institutions, was repealed by Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009.

49-1-8. Sales of surplus products of institutions; disposition of proceeds.

Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1939, p. 392, §§ 1, 4.

49-1-9. Redesignated.

Editor's notes. — Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009, re-designated former Code Section 49-1-9 as present Code Section 49-1-7.

CHAPTER 2

DEPARTMENT OF HUMAN SERVICES

Article 1
General Provisions

- Sec.
49-2-1. Department created; transfer of powers, functions, and duties of Department of Human Resources to Department of Human Services; creation, appointment, removal, and duties of commissioner.
- 49-2-2. Board created; qualifications and appointment of members; terms of office; vacancies; removal; per diem and expenses.
- 49-2-2.1. Department of Human Services becomes successor-in-interest to all rights, duties, and obligations of former Department of Human Resources.
- 49-2-3. Functions transferred to the board from other boards and commissions.
- 49-2-4. Creation of divisions; allocation of functions.
- 49-2-5. Department is institution of state; power to receive and disburse state, county, and federal funds.
- 49-2-6. Duties and powers of department.
- 49-2-7. Functions, duties, and authority transferred to the department from other state agencies.
- 49-2-8. Approval of physicians employed by department [Repealed].
- 49-2-9. Powers of department in administering and disbursing funds.
- 49-2-10. State appropriations; state, county, and federal welfare funds are for public purpose.
- 49-2-11. Acceptance and disbursement of federal aid; compliance with conditions; use of appropriations for matching funds.

- Sec.
49-2-12. Development and revision of transportation plan for programs of department.
- 49-2-13. Identifying transportation needs of the elderly and persons with disabilities and alternatives to meet needs.
- 49-2-13.1. Financial assistance for transportation services for the elderly and persons with disabilities.
- 49-2-14. Record search for conviction data on prospective employees.
- 49-2-14.1. Definitions; records check requirement for licensing certain facilities.
- 49-2-15. Service of notice against department.
- 49-2-16. Council for Welfare Administration.
- 49-2-17. Disciplinary actions against licensees or license applicants for certain violations.

Article 2
Inspection Warrants for Residential
Child Care Licensing

- 49-2-20. Definitions.
- 49-2-21. Persons who may obtain inspection warrants; authorization of searches or inspections of property.
- 49-2-22. Procedure for issuance of inspection warrants.
- 49-2-23. Requirements for validly issued inspection warrant; contents of warrant.
- 49-2-24. Evidence generated inadmissible in criminal proceedings.
- 49-2-25. Proceedings for injunction for purpose of enjoining violations of provisions of residential child care licensing law; injunction to abate public nuisance injurious to public health, safety, or comfort.

Cross references. — Probation officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.4. Sharing of court records among juvenile courts, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.9. Commencement of juvenile court proceeding for child on after-care to Division of Youth Services, Uni-

form Rules for the Juvenile Courts of Georgia, Rule 4.6. Time limitations upon other orders of disposition in juvenile court proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.3. Court costs for care of child certified by juvenile court, Uniform Rules for the Juvenile Courts of Georgia, Rule 21.1.

RESEARCH REFERENCES

ALR. — Social worker malpractice, 58 ALR4th 977.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — The existing provisions of Chapter 2 were designated as Article 1 by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

49-2-1. Department created; transfer of powers, functions, and duties of Department of Human Resources to Department of Human Services; creation, appointment, removal, and duties of commissioner.

(a) There is created a Department of Human Services. The powers, functions, and duties of the Department of Human Resources as they existed on June 30, 2009, except for those relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Division of Public Health, and the Office of Regulatory Services, unless specifically transferred or reassigned to the Department of Community Health or the Department of Behavioral Health and Developmental Disabilities, are transferred to the Department of Human Services effective July 1, 2009, and the Department of Human Resources shall be reconstituted as the Department of Human Services effective July 1, 2009.

(b) There is created the position of commissioner of human services. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the board, subject to the approval of the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department. (Ga. L. 1972, p. 1015, § 1201; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Cross references. — Powers and duties of Department of Community Health generally, § 31-2-1 et seq.

JUDICIAL DECISIONS

Cited in Department of Human Resources v. Briarcliff Haven, Inc., 141 Ga. App. 448, 233 S.E.2d 844 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner's administrative powers not inhibited by Executive Reorganization Act. — Exercise of the power given to the commissioner of human resources to establish the internal structure of the department and to expend available funds for those purposes is not inhibited by any provision of the "Executive Reorganization Act" (Ga. L. 1972, p. 1015), or by the "Board of Human Resources Act" (Ga. L. 1972, p. 1069), or by

the statutory foundation for the functions transferred to the department. 1975 Op. Att'y Gen. No. 75-4.

Structural organization of department. — Commissioner has statutory authority to establish the structural organization of the department, including authority to establish regional offices, and to expend available funds for those purposes. 1975 Op. Att'y Gen. No. 75-4.

49-2-2. Board created; qualifications and appointment of members; terms of office; vacancies; removal; per diem and expenses.

(a) There is created a Board of Human Services, as of July 1, 2009, which shall establish the general policy to be followed by the Department of Human Services created by Code Section 49-2-1. The powers, functions, and duties of the Board of Human Resources as they existed on June 30, 2009, except for those relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Division of Public Health, and the Office of Regulatory Services, unless specifically transferred or reassigned to the Board of Community Health or the Board of Behavioral Health and Developmental Disabilities, are transferred to the Board of Human Services effective July 1, 2009, and the Board of Human Resources as it existed on June 30, 2009, shall be abolished effective July 1, 2009. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(f) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards. (Ga. L. 1972, p. 1069, § 2; Ga. L. 2002, p. 1420, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Cross references. — Rule-making power of Board of Human Services with regard to treatment of the mentally ill, developmentally disabled, and alcoholics, §§ 37-3-2, 37-4-3, 37-7-2. Restriction on power of board members to contract with state-supported institutions, § 45-10-40 et seq.

Administrative rules and regulations. — Hearings and petitions for rule-making, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources Administration, Chapter 290-1-1.

JUDICIAL DECISIONS

Cited in Ray v. Edwards, 557 F. Supp. 664 (N.D. Ga. 1982).

OPINIONS OF THE ATTORNEY GENERAL

Simultaneous service on county board of health. — Person cannot serve simultaneously as board member and county board of health member. 1985 Op. Att’y Gen. No. 85-28.

Member subject to removal when more than seven rendering health services. — Appointment to the Board of Human Resources of more than seven members who are engaged in providing

health services is precluded; any person engaged in providing health services whose appointment to the board causes that limitation to be exceeded could not lawfully hold office and would be subject to removal. 1976 Op. Att’y Gen. No. 76-46.

Ga. L. 1976, p. 344, § 2 (see O.C.G.A. § 45-10-5) did not negate rule-making powers of Board of Human Resources. 1976 Op. Att’y Gen. No. 76-43.1.

49-2-2.1. Department of Human Services becomes successor-in-interest to all rights, duties, and obligations of former Department of Human Resources.

(a) The Department of Human Services shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of

Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Human Services by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Human Services. In all such instances, the Department of Human Services shall be substituted for the Department of Human Resources, and the Department of Human Services shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Human Services in similar capacities, as determined by the commissioner of human services. Such employees shall be subject to the employment practices and policies of the Department of Human Services on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Transferred employees who were subject to the state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted under such system as a result of such transfer. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Human Services.

(d) On July 1, 2009, the Department of Human Services shall receive custody of the state owned real property in the custody of the Department of Human Resources on June 30, 2009, and which pertains to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. (Code 1981, § 49-2-2.1, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2012, p. 446, § 2-94/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of the third sentence of subsection (c) for the former provisions, which read: “Employees who are subject to the rules of the State Personnel Board and thereby under the State Personnel Administration and who are transferred to the department shall retain all existing rights under the State Personnel Administration.”

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

49-2-3. Functions transferred to the board from other boards and commissions.

(a) The policy-making functions of the State Board for Children and Youth, contained in Ga. L. 1963, p. 81, are vested in the Board of Human Services.

(b) The policy-making functions of the Commission on Aging, created in Ga. L. 1962, p. 604, are vested in the Board of Human Services. (Ga. L. 1972, p. 1015, §§ 1215-1217; Ga. L. 1982, p. 833, § 2; Ga. L. 2000, p. 1137, § 10; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-4. Creation of divisions; allocation of functions.

There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department. (Ga. L. 1937, p. 355, § 7; Ga. L. 1960, p. 85, § 8; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-5. Department is institution of state; power to receive and disburse state, county, and federal funds.

The department is declared to be an institution of the state for which the powers of taxation over the whole state may be exercised, and the department is empowered and authorized to administer, expend, and disburse funds appropriated to it and allocated to it by the General Assembly, the respective counties of the state, and the United States, through its appropriate agencies and instrumentalities for the purpose of distributing old-age benefits and all other benefits as provided in this title. (Ga. L. 1937, p. 355, § 2; Ga. L. 1960, p. 85, § 2; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 2009, p. 453, § 2-1/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Voluntarily donated county funds.
— Department may accept public funds donated voluntarily by counties for the provision of day care and other social

services to welfare applicants and other authorized recipients. 1972 Op. Att’y Gen. No. 72-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 70 et seq. 79 Am. Jur. 2d, Welfare Laws, § 53 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2027. 82 C.J.S., Statutes, §§ 487, 488.

49-2-6. Duties and powers of department.

(a) The department shall administer or supervise all county departments of the state as provided in Chapter 3 of this title.

(b) The department shall:

(1) Administer or supervise:

(A) All categories of public assistance established under Code Section 49-4-3;

(B) The operation of state charitable institutions;

(C) Agencies and institutions caring for dependent or mentally or physically disabled or aged adults; and

(D) Such other welfare activities or services as may be vested in it;

(2) Provide services to county governments, including the organization and supervision of county departments for the effective administration of welfare functions and the compilation of statistics and necessary information relative to public welfare problems throughout the state;

(3) Prescribe qualifications and salary standards for welfare personnel in state and county departments, subject to Chapter 20 of Title 45;

(4) Assist other state and federal departments, agencies, and institutions, when so requested, by performing services in conformity with the purposes of this title;

(5) Act as the agent of the federal government in welfare matters of mutual concern in conformity with this title and the administration of any federal funds granted to the state to aid in the furtherance of any functions of the department;

(6) Under rules and regulations prescribed by the board, designate county and district departments to serve as agents in the performance of all state welfare activities in the counties or districts;

(7) Have the right to designate private institutions as state institutions; to contract with such private institutions for such activities, in carrying out this title, as the department may deem necessary from time to time; and to exercise such supervision and cooperation in the operation of such designated private institutions as the department may deem necessary;

(8) Have the right to accept and execute gifts or donations for welfare purposes, as may be prescribed by the donors thereof;

(9) Have authority to delegate in whole or in part the operation of any institution or other activity of the department to any other appropriate department or agency of the state, county, or municipal governments; and to contract with and cooperate with such departments or subdivisions in any manner proper for carrying out the purposes of this title; and

(10) Administer such programs and provide such services as may be appropriate and necessary to strengthen family life and help needy individuals attain the maximum economic and personal independence of which they are capable, including services to applicants and recipients of old-age assistance to help them attain self-care, provided that the costs incurred by the county departments in administering this Code section in conjunction with the public assistance programs administered by the department shall be deemed to be administrative expenses. (Ga. L. 1937, p. 355, § 6; Ga. L. 1949, p. 547, § 2; Ga. L. 1957, p. 368, § 3; Ga. L. 1960, p. 85, §§ 6, 7; Ga. L. 1963, p. 81, § 24; Ga. L. 1995, p. 1302, § 14; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Cross references. — Procedure for interrogation and taking of statements from hearing impaired persons arrested for violation of criminal laws, § 24-6-653.

Law reviews. — For note, “Welfare Due Process: The Maximum Grant Limitation on the Right to Survive,” see 3 Ga. L. Rev. 459 (1969).

For comment discussing *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md. 1969), as to the validity under the fourteenth amendment of a state “maximum grant” welfare provision, see 4 Ga. L. Rev. 203 (1969).

JUDICIAL DECISIONS

Cited in *Georgia Dep’t of Human Resources v. Demory*, 138 Ga. App. 888, 227 S.E.2d 788 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1 and 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-6 and 49-5-7 through former 49-5-11), must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

Voluntarily donated county funds. — Department may accept public funds donated voluntarily by counties for the provision of day-care and other social services to welfare applicants and other authorized recipients. 1972 Op. Att'y Gen. No. 72-12.

Contracts with private institutions for services for mentally retarded children. — Department may contract with a private institution for the purpose of providing day care and other specialized services for mentally retarded children, assign responsibility for the supervision of this contract, and use funds allocated from the Governor's Emergency Fund for these purposes, provided that they do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-96.

Collection of child support recovery unit payments. — Department of Human Resources is authorized to delegate to an appropriate agency the power to collect child support recovery unit payments from the responsible parent. 1982 Op. Att'y Gen. No. 82-99.

Department of Offender Rehabilitation may not enter into an arrangement with the Department of Human Resources in which employees of local probation offices, other than probation supervisors, may collect child support recovery unit money which arises from civil proceedings brought by the Department of Human Resources on behalf of errant fathers. 1982 Op. Att'y Gen. No. 82-99.

Heating Energy Assistance Team funds. — Department of Human Resources may lawfully accept and distribute Heating Energy Assistance Team (HEAT) program funds. In doing so, paragraph (b)(9) (now paragraph (b)(8)) of O.C.G.A. § 49-2-6 is sufficient authority for the department to enter into an acceptance agreement or similar document assuring the donors of the intention to use the funds in the manner contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

Department of Human Resources may utilize the local departments of family and children services to distribute Heating Energy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

Acceptance of federal funds preparing students for public assistance employment. — Department is authorized to accept federal grants and to administer the grants for the purpose of making funds available to the department for matching federal funds for the purpose of making a direct grant from the department to the school for making direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att'y Gen. No. 71-147.

Contracts or cooperation with Board of Regents authorized. — Department is authorized by law to contract or cooperate with the Board of Regents by accepting funds to be used for the purpose of making funds available to the department for matching federal funds for making a direct grant from the department to the school for making direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att'y Gen. No. 71-147.

Rules and regulations of department excluded from filing requirements. — Rules and regulations promulgated by the Department of Human Resources in connection with the department's operation and administration of public assistance programs are expressly excluded from the general filing requirement of the Georgia Administrative Pro-

cedure Act, Ga. L. 1964, p. 338, § 1 et seq. 50-13-22). 1965-66 Op. Att'y Gen. No. (see O.C.G.A. §§ 50-13-1 through 65-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Penal and Correctional Institutions, § 10. 70A Am. Jur. 2d, Social Security and Medicare, § 19. 79 Am. Jur. 2d, Welfare Laws, § 77.

C.J.S. — 64 C.J.S., Municipal Corporations, § 1271. 72 C.J.S., Prisons and Rights of Prisoners, § 17 et seq.

ALR. — Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up “state plan” contemplated by it, 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220; 121 ALR 1002.

49-2-7. Functions, duties, and authority transferred to the department from other state agencies.

(a) The functions, duties, and authority of the Board of Public Welfare, established by Ga. L. 1919, p. 222, as amended, as transferred and vested in the Board of Control of Eleemosynary Institutions by Ga. L. 1931, p. 7, Section 44A, are vested in the Department of Human Services.

(b) The functions, duties, and authority of the Department of Family and Children Services, created in Ga. L. 1937, p. 355, as amended, are vested in the Department of Human Services.

(c) The functions of the State Board for Children and Youth, created in Ga. L. 1963, p. 81, except for the policy-making functions transferred to the Board of Human Resources, are vested in the Department of Human Services.

(d) The functions, duties, and authority of the State Commission on Aging, created in Ga. L. 1962, p. 602, except the policy-making functions transferred to the Board of Human Services, are vested in the Department of Human Services. (Ga. L. 1972, p. 1015, §§ 15, 1203, 1204, 1212, 1213; Ga. L. 1978, p. 239, § 1; Ga. L. 2000, p. 1137, § 11; Ga. L. 2009, p. 453, § 2-1/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Position of director, office of aging, merit system only by act of General
may be placed in classified service of Assembly. 1974 Op. Att'y Gen. No. 74-32.

49-2-8. Approval of physicians employed by department.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1069, § 7.

49-2-9. Powers of department in administering and disbursing funds.

In administering any funds appropriated or made available to the department for welfare purposes, the department shall have the power:

(1) To make use of all local processes to enforce the minimum standards prescribed under or pursuant to the laws providing for grants-in-aid; and

(2) To administer and disburse any and all funds which may be allocated by any municipality of the state or private organization or society for such purposes as may be designated by such municipality or other agency. The department may use a reasonable percentage of such funds for administrative costs, not to exceed 10 percent of the total sum administered. (Ga. L. 1937, p. 355, § 8; Ga. L. 2009, p. 453, § 2-1/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Heating Energy Assistance Team funds. — Department of Human Resources may utilize the local departments of family and children services to distrib-

ute Heating Energy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2095.

49-2-10. State appropriations; state, county, and federal welfare funds are for public purpose.

For the purpose of carrying out the duties and obligations of the department for performance of welfare services of the state, for administrative costs, for matching such federal funds as may be available for all of the aforesaid services, for the purpose of establishing an equalization fund to be used in assisting those counties which may be unable otherwise to bear their proportionate share of the expenses of administration and of dispensing the benefits provided for under this title, and for dispensing all of the benefits provided for under this title, the General Assembly shall make appropriations out of the general fund of the state or otherwise for the various and separate activities of the department. All funds appropriated or allocated to the department or to the county departments by the General Assembly, the fiscal authorities of the respective counties, and by the federal government through its appropriate agencies and instrumentalities are declared to be funds provided for a public purpose; and all appropriations provided for in this Code section and hereafter may be expended and distributed by the

department for the purposes provided for under this title. (Ga. L. 1937, p. 355, § 16; Ga. L. 2009, p. 453, § 2-1/HB 228.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, §§ 70, 72.

49-2-11. Acceptance and disbursement of federal aid; compliance with conditions; use of appropriations for matching funds.

(a) Notwithstanding any provision in this title to the contrary, particularly Articles 2, 3, and 5 of Chapter 4 of this title, nothing therein contained shall be construed to prevent the acceptance of more than 50 percent federal matching funds. The department may accept and disburse the maximum percentage of federal grant-in-aid funds made available to this state by the federal government under any formula of variable grants or other formula for the granting of federal grants-in-aid.

(b) The department is authorized to comply with the requirements prescribed by Congress as conditions to federal grants.

(c) To the end of empowering the department to comply with federal requirements and to effectuate the purposes of grant-in-aid welfare programs, the board is authorized to promulgate all necessary rules and regulations and the department is authorized to do all things necessary and proper for the securing of the maximum amount of such federal grants.

(d) In the event that Congress appropriates funds for grants-in-aid to the state governments for the purpose of assisting them in the operation of general assistance programs, medical assistance programs, or any other welfare programs, the department is authorized to cooperate with the federal government in such programs, to accept funds from the federal government in the maximum amounts made available, to disburse them, and to comply with all requirements of the federal government necessary for the securing of such grant-in-aid funds.

(e) Any state funds which are made available by appropriation to the department for matching federal funds shall be available to supply the state portion of expenditures for general assistance programs, medical assistance programs, or any other type welfare programs provided for by the federal government which benefit the citizens or residents of this state.

(f) Notwithstanding subsections (a) through (e) of this Code section, the Department of Community Health shall be the single state agency

for the administration of the state medical assistance plan. (Ga. L. 1945, p. 196, §§ 1-5; Ga. L. 1961, p. 222, §§ 1, 2; Ga. L. 1977, p. 384, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-1/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Federal funds matched under formulas provided by federal and state regulations. — Department may accept and disburse federal funds and match the federal funds under such formulas as may be provided by the federal government and adopted by the state rules and regulations to the maximum amount provided by federal statute. 1945-47 Op. Att'y Gen. p. 649.

Federal funds to assist students preparing for employment in public assistance. — Department is authorized to accept federal grants and to administer

the grants for the purpose of making funds available to the department for matching federal funds for making a direct grant from the department to the school for making direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att'y Gen. No. 71-147.

Department employee may not contract to sell to the state any services when that sale would benefit, or be likely to benefit, the employee. 1970 Op. Att'y Gen. No. U70-236.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 10.

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 207.

49-2-12. Development and revision of transportation plan for programs of department.

(a) All divisions and sections within the department shall make an inventory of all the various vehicles to which the department holds title and shall investigate their utilization patterns in order to establish and develop a consolidated and coordinated transportation plan for the various human services programs of the department, including, but not limited to, those programs relating to the aged and to the mentally and physically disabled.

(b) Other departments and agencies of the state shall cooperate with the Department of Human Services in mutually beneficial agreements regarding the establishment and development of a coordinated transportation plan involving various vehicles to which the state has title.

(c) The plan required to be developed under this Code section shall identify the fully allocated costs of the transportation component of their services and take into consideration various limitations on the expenditure of federal funds which may arise in any consolidated or coordinated transportation system. No later than June 30, 1980, a preliminary transportation plan shall be submitted by the department to the Human Relations and Aging Committee of the House of Representatives and the Education and Youth Committee of the Senate, which plan shall be revised and submitted to such committees every

two years thereafter. (Ga. L. 1980, p. 1008, § 1; Ga. L. 1992, p. 6, § 49; Ga. L. 1995, p. 1302, § 14; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-13. Identifying transportation needs of the elderly and persons with disabilities and alternatives to meet needs.

All divisions and sections within the department, in cooperation with the Department of Transportation, shall identify those areas of the state where the general transportation needs of the elderly and persons with disabilities are not and cannot be adequately served by bus service and community service centers furnishing transportation. In further cooperation with the Department of Transportation, the department shall identify alternatives for meeting the transportation needs of these persons and shall report to the committees specified in subsection (c) of Code Section 49-2-12 as required therein. Such alternative means to be considered for providing for the transportation needs of these persons should include, but shall not be limited to:

(1) Contract service resulting from competitive bidding by private sector bus operators operating under Article 1 of Chapter 7 of Title 46;

(2) Contract service resulting from competitive bidding by taxi operators;

(3) Negotiated fee basis with municipal and area-wide transportation systems serving the general public; or

(4) Any combination of paragraphs (1) through (3) of this Code section. (Ga. L. 1980, p. 1008, § 2; Ga. L. 1995, p. 1302, § 16; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-13.1. Financial assistance for transportation services for the elderly and persons with disabilities.

(a) The department may, when funds are available from the United States government for such purposes, provide financial assistance with such funds, or such funds and state general funds appropriated for these purposes, to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of the elderly or persons with disabilities, or both, for whom the department determines that the mass transportation services planned, designed, and carried out by local public bodies, agencies, and authorities are unavailable, insufficient, or inappropriate. Such financial assistance shall be subject to those terms, conditions, requirements, and restrictions as the department determines to be necessary or appropriate in order to carry out the purposes of this Code section.

(b) In order to effectuate and enforce this Code section, the department is authorized to promulgate necessary rules and regulations and to prescribe conditions and procedures in order to assure compliance in carrying out the purposes of this Code section. (Code 1981, § 49-2-13.1, enacted by Ga. L. 1990, p. 915, § 3; Ga. L. 1995, p. 1302, § 16; Ga. L. 1996, p. 6, § 49; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-14. Record search for conviction data on prospective employees.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees. Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a personal care home, the provisions of Code Sections 31-7-250 through 31-7-264 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when

the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law. (Code 1981, § 49-2-14, enacted by Ga. L. 1986, p. 1225, § 1; Ga. L. 1999, p. 574, § 2; Ga. L. 2002, p. 942, § 9; Ga. L. 2003, p. 495, § 1; Ga. L. 2005, p. 789, §§ 1, 2/HB 180; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 227 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 71 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 28 et seq.

49-2-14.1. Definitions; records check requirement for licensing certain facilities.

(a) As used in this Code section, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of the following offenses:

(A) A violation of Code Section 16-5-1, relating to murder and felony murder;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41; or

(M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) “Facility” means a child welfare agency required to be licensed under Code Section 49-5-12.

(5) “GCIC” means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) “GCIC information” means criminal history record information as defined in Code Section 35-3-30.

(7) “License” means the document issued by the department to authorize the facility to operate.

(8) “Owner” means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) “Records check application” means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license

to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner’s records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau’s report, the department shall make a determination about an owner’s criminal record and shall notify the owner in writing as to the department’s determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department’s determination regarding an owner’s criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was

committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 11 of Chapter 7 of Title 31.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 49-2-14.1, enacted by Ga. L. 2007, p. 305, § 1/HB 155; Ga. L. 2008, p. 1145, § 3/HB 984; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2013, p. 524, § 3-8/HB 78.)

The 2013 amendment, effective July 1, 2013, substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 16-5-100, relating to cruelty to a person 65 years of

age or older" at the end of subparagraph (a)(2)(E); substituted "or" for " , relating to armed robbery" at the end of subparagraph (a)(2)(L); deleted subparagraph

(a)(2)(M), which read: “A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or”; and redesignated former subparagraph (a)(2)(N) as present subparagraph (a)(2)(M).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, “to” was inserted preceding “this Code section” in paragraph (a)(9).

Administrative rules and regulations. — Criminal Justice Information Exchange and Dissemination, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Council, Practice and Procedure, Chapter 290-5-35.

49-2-15. Service of notice against department.

When any action is brought against the Department of Human Services, the Board of Human Services, the commissioner of human services, or any employee or agent thereof or when any action is brought in which the department could be held responsible for damages awarded in such action, it shall be the duty of the plaintiff to provide for service of notice of the pendency of such action by providing for service of a second original process, issued from the court in which the action is filed, upon the commissioner of human services personally or upon a person designated by the commissioner in writing to serve as agent for the acceptance of such service of process. The service of process in such action shall not be perfected until such second original process has been served as provided in this Code section. The provisions of this Code section shall be cumulative of any other requirements imposed by law for the service of process or notice. (Code 1981, § 49-2-15, enacted by Ga. L. 1989, p. 497, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor’s notes. — Ga. L. 1989, p. 497, § 2, not codified by the General Assembly, provided that the amendment to this Code section by the Act shall apply to all actions filed on or after July 1, 1989.

49-2-16. Council for Welfare Administration.

(a) There is created a Georgia Council for Welfare Administration. The objectives of the council shall be:

- (1) To promote improvements in public welfare and social service programs of the Division of Family and Children Services within the Department of Human Services;
- (2) To provide a forum for the interchange of information relating to welfare and social service programs; and
- (3) To promote with any organization exempt under Section 501(c)(4) of the United States Internal Revenue Code of 1986 a more efficient public welfare delivery system for the citizens of this state.

(b) Membership in the council shall be open to persons actively employed in the Division of Family and Children Services within the Department of Human Services.

(c) No state funds shall be appropriated for the benefit or use of the council.

(d) The council is authorized to adopt bylaws which prescribe its organizational structure, officers, terms and condition of office, meeting schedules, and such other organizational procedures as are necessary for its lawful and effective functioning.

(e) The commissioner of human services shall call the initial meeting of the council at which time the council shall organize and select its officers. (Code 1981, § 49-2-16, enacted by Ga. L. 1996, p. 1423, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-17. Disciplinary actions against licensees or license applicants for certain violations.

(a) This Code section shall be applicable to any agency, facility, institution, or entity subject to regulation by the department under Chapter 5 of this title. For purposes of this Code section, the term “license” shall be used to refer to any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in this subsection.

(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or licensee has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the agency, facility, institution, or entity;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the agency, facility, institution, or entity;

(3) Failed to comply with the licensing requirements of this state; or

(4) Failed to comply with any provision of this Code section.

(c) When the department finds that any applicant or licensee has violated any provision of subsection (b) of this Code section or laws, rules, regulations, or formal orders related to the initial or continued

licensing of the agency, facility, institution, or entity, the department, subject to notice and opportunity for hearing, may take any of the following actions:

(1) Refuse to grant a license; provided, however, that the department may refuse to grant a license without holding a hearing prior to taking such action;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Prohibit any applicant or licensee from allowing a person who previously was involved in the management or control, as defined by rule, of any agency, facility, institution, or entity which has had its license or application revoked or denied within the past 12 months to be involved in the management or control of such agency, facility, institution, or entity;

(5) Revoke any license;

(6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any agency, facility, institution, or entity; or

(7) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into an agency, facility, institution, or entity for a time certain.

In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.

(d) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of an agency, facility, institution, or entity subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(e) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any

settlement agreement shall be bound by the terms specified therein and violation thereof by any applicant or licensee shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(f) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of any agency, facility, institution, or entity has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(g) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any agency, facility, institution, or entity.

(h) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against an agency, facility, institution, or entity reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the agency, facility, institution, or entity to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspection, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(i) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(j) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(k) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(l) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to

those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(m) The department is authorized to promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 49-2-17, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

ARTICLE 2

INSPECTION WARRANTS FOR RESIDENTIAL CHILD CARE LICENSING

49-2-20. Definitions.

As used in this article, the term:

(1) "Inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of a residential child care licensing law.

(2) "Residential child care licensing law" means this chapter and Chapter 5 of this title and any rule or regulation duly promulgated thereunder. (Code 1981, § 49-2-20, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "this article" was substituted for "this part" in the introductory language of this Code section.

49-2-21. Persons who may obtain inspection warrants; authorization of searches or inspections of property.

The commissioner or the commissioner's designee, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this article. Such warrant shall authorize the commissioner or the commissioner's designee to conduct a search or inspection of property either with or without the consent of the person whose property is to be searched or inspected if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated pursuant to a residential child care licensing law. (Code 1981, § 49-2-21, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “this article” was substituted for “this part” at the end of the first sentence in this Code section.

49-2-22. Procedure for issuance of inspection warrants.

(a) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(b) The issuing judge shall issue the warrant when the judge is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this article. (Code 1981, § 49-2-22, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “this article” was substituted for “this part” at the end of paragraph (b)(2).

49-2-23. Requirements for validly issued inspection warrant; contents of warrant.

The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes either directly or by reference to the affidavit the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers in general terms to the statutory or regulatory provisions sought to be enforced. (Code 1981, § 49-2-23, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-24. Evidence generated inadmissible in criminal proceedings.

No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this article shall be competent as evidence in any criminal proceeding against any party. (Code 1981, § 49-2-24, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “this article” was substituted for “this part” in this Code section.

49-2-25. Proceedings for injunction for purpose of enjoining violations of provisions of residential child care licensing law; injunction to abate public nuisance injurious to public health, safety, or comfort.

The Department of Human Services is empowered to institute appropriate proceedings for injunction in the courts of competent jurisdiction in this state for the purpose of enjoining a violation of any provision of a residential child care licensing law as now existing or as may be hereafter amended or of any regulation or order duly issued by the board or department. The department is also empowered to maintain action for injunction to abate any public nuisance which is injurious to the public health, safety, or comfort. Such actions may be maintained notwithstanding the fact that such violation also constitutes a crime and notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the department in the county in which a violation of any provision of this title occurs. (Code 1981, § 49-2-25, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

CHAPTER 3

COUNTY AND DISTRICT DEPARTMENTS, BOARDS,
AND DIRECTORS OF FAMILY AND CHILDREN
SERVICES

Sec.		Sec.	
49-3-1.	Establishment of county and district departments, boards, and directors.		and children services; personal appearance.
49-3-2.	Appointment of county board members; terms; vacancies; optional additional members; per diem and expenses; additional members for counties with population of 550,000 or more.	49-3-4.	Appointment of staff; salaries; power of commissioner to transfer employees.
49-3-3.	Appointment of county director; bond of county director.	49-3-5.	Powers and duties of county director.
49-3-3.1.	Annual report from county director of department of family	49-3-6.	Functions of county department.
		49-3-7.	Removal of county director for falsification of qualifications.
		49-3-8.	Destruction of county departmental records.

Cross references. — Supervision and support of paupers by counties, T. 36, C. 12.

RESEARCH REFERENCES

ALR. — Social worker malpractice, 58 ALR4th 977.

49-3-1. Establishment of county and district departments, boards, and directors.

(a) There shall be in each county of the state a county department of family and children services, which shall consist of a county board of family and children services, a county director of family and children services, and such additional employees as may be necessary for the efficient performance of the welfare services of the county.

(b) With the approval of the Department of Human Services, two or more counties may, however, unite and form a district department of family and children services, in which case a county board shall be appointed for each county composing the district as provided in Code Section 49-3-2 and those boards, acting together, shall constitute the district board. All duties and responsibilities set forth in this title for county departments shall also apply to district departments. The district director and other executive staff of any district department shall be appointed by the Department of Human Services, provided that

the department shall not appoint as district director any person whose appointment is not approved by a majority of the district board concerned in a meeting of such district board called for that purpose. (Ga. L. 1937, p. 355, § 9; Ga. L. 1975, p. 1211, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228.)

JUDICIAL DECISIONS

County departments were state rather than county offices for purposes of O.C.G.A. § 15-12-71 and, thus, as state offices, were not subject to a grand jury's

power of inspection and investigation. *Floyd County Grand Jury v. Department of Family & Children Servs.*, 218 Ga. App. 832, 463 S.E.2d 519 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Board member can hold over until successor appointed. — Construing former Code 1933, § 89-105 and Ga. L. 1937, p. 355, §§ 9 and 10 (see O.C.G.A. §§ 45-2-4, 49-3-1, and 49-3-2) together, a county welfare board (now county board of

family and children services) member whose term has expired can and should hold over and perform the duties of such office until the member's successor has been duly appointed and qualified. 1948-49 Op. Att'y Gen. p. 466.

49-3-2. Appointment of county board members; terms; vacancies; optional additional members; per diem and expenses; additional members for counties with population of 550,000 or more.

(a) Each county board shall consist of five members who shall be appointed by the governing authority of the county. No person serving as a member of a county board on July 1, 1994, shall have such person's term of office shortened by this subsection. On and after that date, however, vacancies in such office which occur for any reason, including but not limited to expiration of the term of office, shall be filled by appointment of the county governing authority except as provided in subsection (c) of this Code section. No elected officer of the state or any subdivision thereof shall be eligible for appointment to the county board. In making appointments to the county board of family and children services, the governing authority shall ensure that appointments are reflective of gender, race, ethnic, and age characteristics of the county population.

(b) The term of office of members of the county board shall be for five years and until the appointment and qualification of their respective successors, except that upon the expiration of the terms of the members of the county board in office on July 1, 1994, one member shall be appointed for a one-year term, one member for a two-year term, one member for a three-year term, one member for a four-year term, and one member for a five-year term.

(c) Appointments to fill vacancies on the county board caused by death, resignation, or removal before the expiration of a term shall be made for the remainder of such term in the same manner as provided in this Code section for original appointments. In the event that the governing authority of the county shall fail to fill any such vacancy or any vacancy caused by expiration of term on the county board within 90 days after such vacancy occurs, the commissioner may appoint members to the county board to fill such vacancies.

(d) In addition to the five members required by subsection (a) of this Code section, the county governing authority is authorized but not required to appoint two additional members. One such additional member shall be a school counselor employed in the county and one such additional member shall be a law enforcement officer of the county who is responsible for investigating reports of child abuse. Members appointed pursuant to this subsection shall be appointed for terms of five years and shall be paid the per diem authorized in subsection (e) of this Code section. Appointments to fill vacancies created by the death, resignation, or removal before the end of the term of a member appointed pursuant to this subsection shall be made in accordance with subsection (c) of this Code section.

(e) Members of the county board shall serve without compensation, except that they shall be paid a per diem of not less than \$15.00 per month and shall be reimbursed for traveling and other expenses actually incurred in the performance of their official duties; provided, however, that the gross expenses assessed against a county shall not exceed the amount of the budget of the county previously set aside and levied by the county authorities for such expenses.

(f) In addition to the five members otherwise provided for in this Code section, the board of family and children services in any county of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census shall include an additional two members who shall be subject to this Code section in the same manner as the five members otherwise provided for in this Code section. Each member provided for in this subsection shall be appointed for a term of five years and until the appointment and qualification of the member's successor, except that in the initial appointment of the two additional members one member shall be appointed for a four-year term and one member for a five-year term; and these initial members shall serve until the appointment and qualification of their successors. (Ga. L. 1937, p. 355, § 10; Ga. L. 1963, p. 222, § 1; Ga. L. 1981, p. 960, § 1; Ga. L. 1988, p. 1354, § 1; Ga. L. 1994, p. 505, § 1.)

JUDICIAL DECISIONS

Board action valid despite ineligibility of board member for appointment. — While a justice of the peace is such an elective officer of the state as would render the justice ineligible under this section for appointment by the constituted fiscal or financial agents of a county as a member of the county board of public welfare (now county board of family and children services), yet, notwithstanding such ineligibility, if the justice is appointed as a member of the board and acts

as such, the justice, while so acting, is a member of the board de facto, and the official acts of the board wherein the justice participates are valid, and cannot be collaterally attacked upon the ground that such person was incompetent to hold such office. *Zorn v. Walker*, 206 Ga. 181, 56 S.E.2d 511 (1949).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner has choice in selecting person for board. — It was the intent of the legislature in stating that the Director of the State Department of Family and Children Services (now Commissioner of Human Resources) shall select for each position on a county board one of the three names submitted by the county commissioners so that the director may be given a choice. 1963-65 Op. Att'y Gen. p. 256.

Commissioner has right to reject names submitted and appoint members. — Since it is the legislative intent of this section to provide the director (now commissioner) a choice, the director has the right to reject the names of the few qualified who are submitted and, of the director's own motion, make appointments to fill the vacancies existing on the county board. 1963-65 Op. Att'y Gen. p. 256.

Appointment of public assistance recipient creates conflict of interest. — Public assistance recipient serving as member of county board of family and children services would have both opportunity and temptation to profit by his or her official duties. For this reason, a conflict of interest would arise in the event that a public assistance recipient is appointed to a county board of family and children services. 1981 Op. Att'y Gen. No. 81-32.

Board member can hold over until successor appointed. — Construing former Code 1933, § 89-105 and Ga. L. 1937, p. 355, §§ 9 and 10 (see O.C.G.A.

§§ 45-2-4, 49-3-1, and 49-3-2) together, a county welfare board (now county board of family and children services) member whose term has expired can and should hold over and perform the duties of such office until the member's successor has been duly appointed and qualified. 1948-49 Op. Att'y Gen. p. 466.

Section directory and not mandatory. — Language contained in this section is directory and not mandatory and, therefore, the Director of the State Department of Family and Children Services (now Commissioner of Human Resources) may name members of a county board in the event that any county board is not named within a reasonable time as provided in that section. 1963-65 Op. Att'y Gen. p. 256.

County board member not disqualified as candidate for elective state office. — This section prohibits any member of the county board from serving on that board while the member is an elected officer of the state or any subdivision thereof. A county board member would not be disqualified as a candidate for an elective state office, but the member would be disqualified to hold membership on the county board after election and qualification. 1957 Op. Att'y Gen. p. 34.

Members of the General Assembly are elected officers and would come within the provision of this section. 1948-49 Op. Att'y Gen. p. 723.

County boards and departments of family and children services. — County boards and departments of family

and children services are state instrumentalities and their employees are state employees. 1977 Op. Att'y Gen. No. U77-54.

49-3-3. Appointment of county director; bond of county director.

(a) Each county board of family and children services shall recommend to the commissioner of human services one or more names for appointment to the position of county director. The commissioner is designated as the appointing authority for the department and may accept or reject any such recommendation.

(b) The county director shall give bond for the faithful performance of his duties and the faithful accounting of all moneys coming into his hands as such county director, in such a manner and under such terms and conditions as may be prescribed by the Department of Human Services. (Ga. L. 1937, p. 355, § 11; Ga. L. 1951, p. 282, § 1; Ga. L. 2000, p. 240, § 2; Ga. L. 2008, p. 345, § 1/HB 715; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228.)

JUDICIAL DECISIONS

Commissioner not required to ignore considerations of local concern.

— If the commissioner determines that the local concern and reaction to the selection of the recommended applicant, arising not from the applicant's race or other impermissible criteria but from the public's perception of the applicant's ability to render them impartial service, would proximately result in the diminution of effectiveness to run the department, and would result in an adverse public image for the county and state departments, the commissioner should not be required to ignore such consider-

ations in the commissioner's capacity as appointing authority. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

Authority to decline county board's recommendation. — As the administrative officer with the express power to make the appointment, it follows by necessary implication that the commissioner has the authority to decline to follow the county board's recommendation. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

County boards and departments of family and children services.

County boards and departments of family

and children services are state instrumentalities and their employees are state employees. 1977 Op. Att'y Gen. No. U77-54.

49-3-3.1. Annual report from county director of department of family and children services; personal appearance.

(a) The county director of the department of family and children services of each county shall provide an annual report no later than December 31 of each year, beginning in the year 2000, to the county

board, county commission, and the director of the Division of Family and Children Services. The county director of the department of family and children services of each county shall notify each member of the General Assembly whose legislative district includes any part of that county of the availability of the annual report but shall not be required to distribute copies of the annual report to the members. The report shall include the following information for the 12 month period ending June 30 of that year:

- (1) The number of children for whom the county department has received a complaint of child abuse pursuant to Code Section 19-7-5;
- (2) General demographic data such as gender, race, and age regarding children specified in paragraph (1) of this subsection;
- (3) The number of children taken into county department custody;
- (4) The number of placements of children in county department custody by the type of placement;
- (5) The length of time in county department custody by the number of children; and
- (6) Any other information required by the director of the Division of Family and Children Services.

(b) A majority of the legislative delegation whose members are required to receive notification pursuant to subsection (a) of this Code section shall be authorized to require the director of the department of family and children services of the county which provided that report to appear before that delegation and to answer questions regarding that report and other matters relating to issues of child abuse and child protective services. (Code 1981, § 49-3-3.1, enacted by Ga. L. 2000, p. 240, § 3; Ga. L. 2005, p. 1036, § 38/SB 49.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “subsection” was substituted for “Code section” at the end of paragraph (a)(2).

49-3-4. Appointment of staff; salaries; power of commissioner to transfer employees.

(a) The county department staff necessary to administer welfare activities within the county shall be appointed pursuant to the rules and regulations of the Department of Human Services and the State Personnel Board and subject to the approval of the commissioner of human services. Staff appointments shall meet the qualifications prescribed by the department.

(b) The salaries of the members of the staff shall be fixed by the county director in conformity with the salary schedule prescribed by the Department of Human Services.

(c) The commissioner shall have power to transfer from one county to another or from one district to another any employee of a county department. (Ga. L. 1937, p. 355, §§ 12, 14; Ga. L. 1951, p. 282, § 1; Ga. L. 1963, p. 222, § 2; Ga. L. 2000, p. 240, § 4; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-95/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “State Personnel Board” for “State Personnel Administration” in the first sentence of subsection (a).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

JUDICIAL DECISIONS

No authority of board, superior court, or appellate court to compel promotions. — Neither the Board of Human Resources, the superior court, nor the appellate court has the authority to compel a promotion when the appointing authority has, within the bounds of the authority’s permissible discretions, declined to do so. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

County not “employer” for federal civil rights purposes. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by

the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources with respect to the terms and conditions of employment including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an “employer” within the meaning of Title VII (42 U.S.C. § 2000e et seq.) of the federal Civil Rights Act of 1964. *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

County boards and departments of family and children services are state instrumentalities and their employees

are state employees. 1977 Op. Att’y Gen. No. U77-54.

49-3-5. Powers and duties of county director.

The county director shall be the executive and administrative officer of the county department, shall be responsible for operations and personnel, and shall serve as the secretary of the county board. He shall prepare and submit to the county board for its approval an annual budget of all funds necessary for the county department. He shall prepare annually a full report of the operations and administration of the county department. (Ga. L. 1937, p. 355, § 12; Ga. L. 1963, p. 222, § 2; Ga. L. 1976, p. 685, § 2.)

49-3-6. Functions of county department.

Subject to the rules and regulations of the Board of Human Services, the county department shall be charged with the administration of all forms of public assistance in the county, including home relief; indoor and outdoor care for those in need; temporary assistance for needy families; old-age assistance; aid to the blind and otherwise disabled; the care and treatment of dependent, neglected, delinquent, and disabled children; and such other welfare activities as shall be delegated to it by the Department of Human Services or by the county commissioners. The county department shall also investigate and pass upon all applications for admission to and discharge from county institutions which provide care and treatment for indigents. If so appointed by a court of competent jurisdiction, the Department of Human Services or the county or district department of family and children services shall perform under the supervision of such court the function of probation officer or agent of the court in any welfare or penal matters which may be before it. (Ga. L. 1937, p. 355, § 13; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article comment-

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in In re R.L.M., 171 Ga. App. 940, 321 S.E.2d 435 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Heating Energy Assistance Team funds. — Department of Human Resources may utilize the local departments of family and children services to distrib-

ute Heating Energy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

49-3-7. Removal of county director for falsification of qualifications.

The State Personnel Board and the Department of Administrative Services shall remove from office any county director who has falsified any statement relating to his or her education, social welfare service, or other qualification, in any particular, whether material or immaterial. The application of the county director for examination, on file with the Department of Administrative Services, shall not be allowed to be varied by other evidence offered by the county director; the application itself shall be the controlling factor in the determination of its truth or

untruth. (Ga. L. 1945, p. 689, §§ 1, 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-96/HB 642.)

The 2012 amendment, effective July 1, 2012, twice substituted “Department of Administrative Services” for “State Personnel Administration” in this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

49-3-8. Destruction of county departmental records.

Any county department of family and children services, at the discretion of the county director, may destroy public assistance case records which have been inactive for three years or more, as well as related statistical and financial forms and reports. A record must be retained beyond the three-year period as long as a federal or state audit of that record is in progress, or if an audit’s findings have not been resolved, or if the case in question is the subject of pending administrative or judicial litigation. (Ga. L. 1953, p. 17, § 1; Ga. L. 1982, p. 881, §§ 1, 3.)

CHAPTER 4

PUBLIC ASSISTANCE

Article 1		Sec.	
General Provisions			
Sec.			
49-4-1.	Short title.	49-4-18.	munity work experience programs [Repealed].
49-4-2.	Definitions.		Article construed with federal Social Security Act; adoption of rules to comply with federal act.
49-4-3.	Establishment of categories of public assistance; powers and duties in administration of article.	49-4-19.	Social assistance register.
49-4-4.	Residence in state as affecting eligibility for public assistance.	49-4-30.	
49-4-5.	Determining amount of public assistance.	49-4-31.	
49-4-6.	Reserves, income, and resources to be disregarded.	49-4-32.	
49-4-7.	Receipt of compensation for residence sold by government action not to affect eligibility.	49-4-33.	
49-4-8.	Application for public assistance.	49-4-34.	
49-4-9.	Investigation and record concerning applicant.	49-4-35.	
49-4-10.	Physical examination of applicant.		
49-4-11.	Award and payment of public assistance.	49-4-36.	
49-4-12.	Periodic redetermination of award; reporting changes in recipient's circumstances; review by department.	49-4-37.	
49-4-13.	Hearings; appeal.	49-4-38.	
49-4-14.	Regulations as to records; use or disclosure of information; penalty.		
49-4-15.	Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.	49-4-50.	
49-4-15.1.	Examination of financial records in instances of alleged fraud.	49-4-51.	
49-4-16.	Research, demonstration, and work experience programs; surplus food distribution.	49-4-52.	
49-4-17.	Funding costs of assistance and administration; county participation not required.	49-4-53.	
49-4-17.1.	Establishment of pilot com-	49-4-54.	
		49-4-55.	
		49-4-56.	

Article 2

Old-Age Assistance

- Short title.
- Definitions.
- Eligibility for assistance under this article.
- Duties of department under this article.
- Duties of county departments under this article.
- Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.
- Payment of assistance after recipient moves to another county.
- Claims to assistance subject to amendments or repeals.
- Roll book of employees.

Article 3

Aid to the Blind

- Short title.
- Definitions; when person considered blind.
- Eligibility for assistance under this article.
- Duties of department under this article.
- Duties of county departments under this article.
- Examination of applicant by ophthalmologist or optometrist.
- Reexamination of recipient's eyesight; furnishing information.

Sec.		Sec.	
49-4-57.	Providing supplementary treatment services.		administration, and modification of state plan; drug application fees.
49-4-58.	Assistance is neither assignable nor subject to legal process; payment of assistance check after death of recipient.	49-4-142.1.	Legislative notification of request for waiver.
49-4-59.	Recovery of assistance payments from recipient's estate; federal share of amounts recovered.	49-4-143.	Power of Board of Community Health; Board of Medical Assistance abolished.
49-4-60.	Payment of assistance after recipient moves to another county.	49-4-144.	Chief administrative officer; powers and duties.
49-4-61.	Claims to assistance subject to amendments or repeals.	49-4-145.	Time limitations on claims for assistance; form of claims.
		49-4-146.	Time for action on claim.
		49-4-146.1.	Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations; notifications; authorization to obtain income eligibility verification.

Article 4

Aid to the Disabled

49-4-80.	Definitions.		
49-4-81.	Eligibility for assistance under this article.		
49-4-82.	Duties of department under this article.		
49-4-83.	Duties of county departments under this article.	49-4-146.2.	Requirements for voluntary termination of provider agreements by nursing facilities; adjustment of medical assistance rate; decertification.
49-4-84.	Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.	49-4-146.3.	Forfeiture of property and proceeds obtained through Medicaid fraud; fraud forfeiture proceedings; seizure of property subject to forfeiture; lien; inventory; court orders.
49-4-85.	Payment of assistance after recipient moves to another county.	49-4-147.	Enforcement of liens, claims, or offsets against assistance.
49-4-86.	Claims to assistance subject to amendments or repeals.	49-4-147.1.	Claims by department against estate of Medicaid recipients.
		49-4-147.2.	Noneligibility of Department of Community Health to obtain nor be liable for interest on orders, judgments, and liquidated or unliquidated amounts; exemptions.
		49-4-148.	Recovery of assistance from third party liable for sickness, injury, disease, or disability; compromise or waiver of claim; compliance; effective date.
		49-4-149.	Lien of Department of Community Health against third parties; subrogation to recipi-

Article 5

Aid to Families With Dependent Children

49-4-100 through 49-4-119 [Repealed].

Article 6

Medical Assistance for Aged

49-4-120 through 49-4-128 [Repealed].

Article 7

Medical Assistance Generally

49-4-140.	Short title.		
49-4-141.	Definitions.		
49-4-142.	Department of Community Health established; adoption,		

Sec.

- ents' insurance claims; assignment of recipients' claims.
- 49-4-149.1. Submission by department of plan for family supplementation of Medicaid payments upon federal removal of restrictions.
- 49-4-150. Regulations as to maintenance and use of records; certificate as to use of information.
- 49-4-151. Obtaining information for investigations and audits.
- 49-4-152. Research and demonstration projects; pilot projects to provide health care coverage and essential health care services; pharmacy assistance programs.
- 49-4-152.1. Medicaid Prescription Drug Bidding and Rebate Program.
- 49-4-152.2. Rebates for sole-source and multiple-source drugs included in Controlled Medical Assistance Drug List.
- 49-4-152.3. Reuse of unit dosage drugs.
- 49-4-152.4. Department contracts to require refund of prescription drug rebates.
- 49-4-152.5. Restocking fees.
- 49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.
- 49-4-154. Powers and duties retained by Department of Human Resources (Department of Community Health).
- 49-4-155. Department of Community Health to succeed to existing rules, regulations, policies, procedures, and administrative orders.
- 49-4-156. Tax exemption for health maintenance organizations with respect to contracts pursuant to this article [Repealed].
- 49-4-156.1. Reimbursement for services rendered under Article 5 of Chapter 6 of this title.

Sec.

- 49-4-157. Construction of this article with federal act.

Article 7A

Long-term Care Partnership Program

- 49-4-160. Short title.
- 49-4-161. Definitions.
- 49-4-162. Program established; purposes; assets to be disregarded with respect to Medicaid eligibility or payment or recovery by the state of payments for medical services.
- 49-4-163. Eligibility for asset disregard; reciprocal agreements with other states to extend asset disregard mutually.
- 49-4-164. Requirements for selling qualified long-term care insurance partnership policies; rules and regulations; reports.
- 49-4-165. Notice to consumers.
- 49-4-166. Effective date [Repealed].

Article 7B

False Medicaid Claims

- 49-4-168. Definitions.
- 49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.
- 49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation; stay of discovery; receipt of proceeds.
- 49-4-168.3. Standard of proof; procedure; intervention by Attorney General.
- 49-4-168.4. Protection of employees from discrimination; relief; statute of limitations.
- 49-4-168.5. Statute of limitations.
- 49-4-168.6. Venue.

Article 7C

Therapy Services for Children with Disabilities

- 49-4-169. Legislative findings and intent.

- Sec.
49-4-169.1. Definitions.
49-4-169.2. Services and treatment for categorically needy and medically fragile children.
49-4-169.3. Requirements relating to administrative prior approval for services and appeals; statutory construction.

Article 8

Personal Representative to Manage Assistance Payments

- 49-4-170. Grounds for appointing personal representative; petition by county or district director.
49-4-171. Hearing on petition; appointment, duties, and removal of representative; court costs waived.
49-4-172. Appeal from order of appointment or removal.
49-4-173. Maintenance of records by county or district director; use of facts and findings in other proceedings.

Article 9

Temporary Assistance for Needy Families

- 49-4-180. Short title.
49-4-181. Definitions.

- Sec.
49-4-182. Temporary Assistance for Needy Families Program created.
49-4-183. Administration of article by department; promulgation of rules and regulations by board; duties of department.
49-4-184. Eligibility for assistance.
49-4-185. Sanctions against recipient for failure to comply.
49-4-186. Schedule of assistance to eliminate increment in benefits under TANF program as result of child birth during eligibility period.
49-4-187. Assistance for applicants moving into state after receiving assistance from another state.
49-4-188. Assistance for qualified aliens.
49-4-189. [Reserved].
49-4-190. Construction of article.
49-4-191. Establishment and enforcement of standards and procedures by department.
49-4-192. Establishment of pilot LEARNFARE program.
49-4-193. Established drug testing; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

Cross references. — Workers' compensation, T. 34, C. 9. Assisting low or fixed income persons to pay gas and electric bills, § 46-1-5. Powers and duties of

Department of Human Services regarding federal government programs relating to the aging, § 49-6-1 et seq.

JUDICIAL DECISIONS

Coverage for nonresident patients. — Owner/operator of a Georgia nursing home facility was entitled to medicaid reimbursement for nonresident long-term care patients who, after the termination of a reciprocal interstate agreement with South Carolina governing coverage for

such patients, expressed in writing the patients' will and intent to be Georgia residents. *State v. Stuckey Health Care, Inc.*, 189 Ga. App. 126, 375 S.E.2d 235, cert. denied, 189 Ga. App. 913, 375 S.E.2d 235 (1988).

RESEARCH REFERENCES

ALR. — Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets, 19 ALR4th 146.

Eligibility for welfare benefits as af-

ected by claimant's status as trust beneficiary, 21 ALR4th 729.

Propriety of telephone testimony or hearings in public welfare proceedings, 88 ALR4th 1094.

ARTICLE 1

GENERAL PROVISIONS

49-4-1. Short title.

The short title of this article shall be "Georgia Public Assistance Act of 1965." (Ga. L. 1965, p. 385, § 1.)

Law reviews. — For note discussing the denial of social security benefits to dependent children pursuant to substitute father provisions as violative of due

process, prior to the 1967 amendments to the Georgia Public Assistance Act (O.C.G.A. § 49-4-1 et seq.), see 15 J. of Pub. L. 349 (1966).

JUDICIAL DECISIONS

Cited in *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Tellis v. Saucier*, 133 Ga. App. 779, 213 S.E.2d 39

(1975); *Dix v. State*, 156 Ga. App. 868, 275 S.E.2d 807 (1981); *So v. Ledbetter*, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

49-4-2. Definitions.

As used in this article, the term:

(1) "Department" means the Department of Human Services and includes the county departments of family and children services and the agents, agencies, officers, and employees designated by the commissioner of human services to perform any function vested in the Department of Human Services by this article.

(2) "Public assistance" means payment in or by money, medical care, remedial care, goods, or services to or for the benefit of needy persons under any categories that may be established pursuant to this article.

(3) "Recipient" means a person to whom, or on whose behalf, public assistance is granted. (Ga. L. 1965, p. 385, § 2; Ga. L. 1967, p. 878, § 1; Ga. L. 1977, p. 384, § 19; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "commissioner of human services" was substituted

for "commissioner of human resources" in paragraph (1).

JUDICIAL DECISIONS

Cited in Briarcliff Haven, Inc. v. Department of Human Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Limiting time for presentation of claims of Medicaid providers. — Department of Human Resources as administrator of Georgia's Medicaid program (now administered by Department of Community Health) is not prohibited from limiting the time within which claims of providers of Medicaid services must be presented for payment. 1971 Op. Att'y Gen. No. 71-153.

County may donate funds to be used for child day care services as part of the state's Aid to Families with Dependent Children program. 1975 Op. Att'y Gen. No. U75-1.

Appropriation to private day care center not operated as service for eligible children. — Since the Georgia Constitution limits county taxation and expenditures to welfare programs as provided by law, and the only welfare provided by law which may include day care services is the Aid to Families with Dependent Children program, there would be no authority for a county to appropriate money for the private day care center which is not operated as a service for eligible children. 1975 Op. Att'y Gen. No. U75-1.

49-4-3. Establishment of categories of public assistance; powers and duties in administration of article.

(a) The Department of Human Services is authorized to establish any of the following categories of public assistance and to adopt plans combining the administration of such categories of public assistance as the Department of Human Services may elect:

- (1) Old-age assistance;
- (2) Aid to the blind;
- (3) Aid to the disabled;
- (4) Temporary assistance for needy families; and

(5) Aid to the aged, blind, and adult disabled persons under a combined plan adopted pursuant to Title XX of the federal Social Security Act.

(b) This article shall be administered by the Department of Human Services, including the county departments of family and children services acting under the direction and supervision of the commissioner. In administering this article the department, including the county departments acting under the direction and supervision of the director of the Division of Family and Children Services, shall:

- (1) Provide for maximum cooperation with other agencies, public and private, of this state, of other states, and of the federal govern-

ment in rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) Establish and enforce such rules and regulations as may be necessary or desirable to carry out this article; provided, however, that the commissioner of the Department of Human Services may delegate to the director of the Division of Family and Children Services the responsibility for the development and issuance of procedural manuals;

(3) Cooperate in all necessary respects with agencies of the United States government in the administration of this article, and accept any funds, goods, or services available to the department for public assistance and for other welfare programs and projects;

(4) Enter into reciprocal and cooperative agreements with other agencies of this state and with agencies of any other state relative to the providing of assistance or service to residents and nonresidents; and

(5) Make reports at such times and in such form as may be required by agencies of the United States government. (Ga. L. 1965, p. 385, § 3; Ga. L. 1967, p. 878, §§ 2, 3; Ga. L. 1982, p. 883, §§ 1, 2; Ga. L. 1984, p. 22, § 49; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Cross references. — Duty and authority of department to enforce support duty of parents whose children are receiving public assistance from department, § 19-11-1 et seq.

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title XX of the federal Social Security Act, referred to in paragraph (a)(5) of this Code section, is codified at 42 U.S.C. § 1397 et seq.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in *Cox v. Cox ex rel. State Dep't of Human Resources*, 255 Ga. 6, 334 S.E.2d 683 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Limiting time for presentation of claims of medicaid providers. — Department of Human Resources as administrator of Georgia's Medicaid program (now administered by Department of

Community Health) is not prohibited from limiting the time within which claims of providers of medicaid services must be presented for payment. 1971 Op. Att'y Gen. No. 71-153.

RESEARCH REFERENCES

ALR. — Eligibility of strikers to obtain public assistance, 57 ALR3d 1303.

49-4-4. Residence in state as affecting eligibility for public assistance.

Public assistance shall be awarded to, or on behalf of, any individual who is a resident of this state and is otherwise eligible therefor under one of the categories established pursuant to this article, as determined in accordance with the regulations of the board; provided, however, that residence in this state in excess of one year may not be required with respect to any individual under any category; and provided, further, that with respect to “medical assistance” no residence requirement which excludes any individual who resides in this state may be imposed. (Ga. L. 1965, p. 385, § 4; Ga. L. 1967, p. 878, § 4.)

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

RESEARCH REFERENCES

ALR. — Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.

Eligibility of strikers to obtain public assistance, 57 ALR3d 1303.

49-4-5. Determining amount of public assistance.

The amount of public assistance which any person shall receive shall be determined in accordance with regulations approved by the board. (Ga. L. 1965, p. 385, § 5.)

JUDICIAL DECISIONS

Cited in *Health Facility Invs., Inc. v. Georgia Dep't of Human Resources*, 238 Ga. 383, 233 S.E.2d 351 (1977); *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

49-4-6. Reserves, income, and resources to be disregarded.

(a) In determining eligibility for and the amount and kind of public assistance to be provided, the board shall prescribe by regulations reasonable emergency reserves and the income and resources which may be exempt and disregarded. With respect to any category of assistance, the income and resources to be disregarded shall not be in excess of the amounts and kinds authorized under the federal Social

Security Act and shall not be less than the amounts and kinds of income and resources required to be disregarded by the federal Social Security Act and any other act of Congress relating to the assistance programs in which federal financial participation is authorized under Titles IV, XVI, XIX, and XX of the federal Social Security Act.

(b) (See editor's notes.) For purposes of applying the \$50.00 child support disregard provided for in Title IV of the federal Social Security Act, amounts paid by the Social Security Administration under the Old Age Survivors and Disability Insurance (OASDI) program, payments made by the United States Department of Veterans Affairs to the family, and any other benefits not assignable to the state pursuant to Title IV of the federal Social Security Act shall not be considered child support.

(c) Notwithstanding any other provision of this Code section, this chapter, or state law, to the extent that such disregard does not violate federal law or terminate or decrease the state's eligibility for federal funding for public assistance or for disabled persons, the Department of Human Services, the Department of Community Health, and their successors shall disregard for the purpose of eligibility for public assistance or assistance for disabled persons any funds or property held in trust for a disabled person by a community trust created and administered in accordance with Chapter 10 of Title 30, a trust for a person with one or more impairments with substantially similar provisions for distributions, or any noncash distributions from such trusts. (Ga. L. 1965, p. 385, § 14; Ga. L. 1967, p. 878, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1987, p. 1435, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1996, p. 804, § 3; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "community trust" was substituted for "Community Trust" in subsection (c).

Editor's notes. — Ga. L. 1987, p. 1435, § 5(b), not codified by the General Assembly, provided: "Subsection (b) of Code Section 49-4-6, as amended by Section 1 of this Act, is repealed effective on the date on which the federal acts referenced herein or any federal regulations or interpretations of such act or regulations by the federal agency or a judicial decision binding on the State of Georgia are amended or changed to allow federal financial participation in AFDC payments which treat social security disability benefits or veterans' benefits in the same

manner as other child support payments."

Those provisions of Title IV of the federal Social Security Act relating to the child support disregard (42 U.S.C. § 602(a)(8)(A)(vi)) were repealed by § 103 of P.L. 104-193, the "Personal Responsibility & Work Opportunity Reconciliation Act of 1996."

U.S. Code. — Titles IV, XVI, XIX, and XX of the federal Social Security Act, referred to in this Code section, are codified at 42 U.S.C. §§ 601 et seq., 1381 et seq., 1396 et seq., 1397 et seq., respectively.

Law reviews. — For article, "Special Needs Trusts: A Planning Tool with Promises," see 16 (No. 2) Ga. St. B.J. 18 (2010).

JUDICIAL DECISIONS

Validity of 1987 amendment. — The 1987 amendment to O.C.G.A. § 49-4-6 was presumed valid notwithstanding a contention that the amendment was passed in violation of the Fiscal Note Act (O.C.G.A. § 28-5-42), which mandates that “any bill having a significant impact

on the anticipated revenue or expenditure level of any state department ... or other state agency must be introduced no later than the twentieth day of any session.” *Wilson v. Ledbetter*, 194 Ga. App. 32, 389 S.E.2d 771 (1989), rev’d on other grounds, 260 Ga. 180, 390 S.E.2d 846 (1990).

RESEARCH REFERENCES

ALR. — Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 ALR3d 772.

Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 ALR4th 215.

49-4-7. Receipt of compensation for residence sold by government action not to affect eligibility.

Notwithstanding any other law, rule, or regulation to the contrary, an individual who is otherwise qualified to receive any public assistance administered by the department shall not become ineligible to continue to receive such benefits because of the receipt of compensation by such individual from the sale or acquisition of any real estate used as the residence of such individual as the result of displacement through the necessity of governmental action which directly or indirectly causes the sale or acquisition of such property. Such individual may receive such compensation; hold, invest, and reinvest the proceeds thereof in any manner whatsoever; and continue to receive such benefits if he shall remain otherwise qualified; provided, however, this article shall not become effective until approved by the United States Department of Health and Human Services. (Ga. L. 1963, p. 616, § 1.)

49-4-8. Application for public assistance.

Applications for public assistance shall be submitted to and accepted by the county department of the county of the applicant’s residence from or on behalf of any person who believes himself eligible for public assistance. Such applications shall be made in the manner and form prescribed by the Department of Human Services and shall contain such information as the department shall require. (Ga. L. 1965, p. 385, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-9. Investigation and record concerning applicant.

Whenever a county department shall receive an application for public assistance, the county department shall promptly make an investiga-

tion and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as may be required by the Department of Human Services. (Ga. L. 1965, p. 385, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

49-4-10. Physical examination of applicant.

With respect to applicants for any category of public assistance authorized under Code Section 49-4-3, the department may require physical examinations of any applicant and may require the results thereof to be recorded by the examining physician on a form furnished by the department. Upon receipt of the form from the examining physician, the county department shall forward it to the department, whose duty it shall be to review the medical information contained thereon and determine therefrom whether the applicant meets the medical requirements for assistance under this article. When said decision has been made by the department, the county department will be notified and bound thereby. (Ga. L. 1965, p. 385, § 18.)

49-4-11. Award and payment of public assistance.

(a) Upon the completion of the investigation under Code Section 49-4-9, the county department shall decide whether the applicant is eligible for assistance under this article and determine, in accordance with the rules and regulations of the Board of Human Services, the amount and kind of such assistance and the date on which such assistance shall begin. After a determination has been made as to the eligibility for and the type and amount of assistance to be provided, such assistance shall be furnished with reasonable promptness to all eligible persons in accordance with regulations of the board.

(b) Money payments of public assistance shall be made by check or electronic transfer in accordance with the regulations of the board. (Ga. L. 1965, p. 385, § 8; Ga. L. 1997, p. 1021, § 1; Ga. L. 2009, p. 453, § 2-3/HB 228.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article comment-

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

49-4-12. Periodic redetermination of award; reporting changes in recipient's circumstances; review by department.

(a) All public assistance grants made under this article shall be reconsidered by the county departments of family and children services as frequently as may be required by rules of the Board of Human Services; but in every case the county department shall make such reconsideration at least once each year. After such further investigation as the commissioner may deem necessary, the amount of public assistance may be changed or may be entirely withdrawn if it is found by the department that any such grant has been made erroneously or if it is found that the recipient's circumstances have altered sufficiently to warrant such action.

(b) If, at any time during the continuance of public assistance, the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him or if other changes shall occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall be his duty to notify the county department of such fact immediately on the receipt or possession of such additional income or resources or on the change of circumstances.

(c) The department may also, upon its own motion, review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time. Where the department, on its own motion, reviews a decision of a county department or considers applications upon which a decision has not been made, it may make such additional investigation as it may deem necessary; and it shall determine whether the applicant shall be granted assistance and the amount of such assistance and whether assistance being paid to a recipient shall be modified or canceled. Any applicant or recipient affected by such a decision of the department shall, upon request, be given reasonable notice and opportunity for a hearing by the department. (Ga. L. 1965, p. 385, § 9; Ga. L. 2009, p. 453, § 2-3/HB 228.)

JUDICIAL DECISIONS

Cited in *Cummings v. State*, 143 Ga. App. 811, 240 S.E.2d 112 (1977).

RESEARCH REFERENCES

ALR. — Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 ALR3d 772.

49-4-13. Hearings; appeal.

(a) Except as provided in subsection (b) of this Code section, an applicant for or recipient of public assistance who is aggrieved by the action or inaction of the department, including any county department of family and children services, shall be entitled to a hearing. Each applicant or recipient shall be notified of his or her right to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted by the Office of State Administrative Hearings in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” the rules and regulations of the Office of State Administrative Hearings, and the rules and regulations prescribed by the board. The decision of the commissioner on any appeal shall be final, subject to the right to judicial review of contested cases under Chapter 13 of Title 50.

(b) An applicant for or recipient of assistance under Article 9 of this chapter, the “Temporary Assistance for Needy Families Act,” shall be authorized to request and receive a hearing to challenge any denial, reduction, or termination of assistance based upon any action by the department, including any county department of family and children services. Nothing contained in this subsection shall operate to create an entitlement to the receipt of assistance under the TANF program. (Ga. L. 1965, p. 385, § 12; Ga. L. 1997, p. 1021, § 2.)

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability. ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 2804 (1997).

Law reviews. — For article comment-

JUDICIAL DECISIONS

Language “shall be final” in Ga. L. 1965, p. 385, § 12 (see O.C.G.A. § 49-4-13) should not be read to foreclose review under the Georgia Administrative Procedure Act, Ga. L. 1965, p. 283, § 1 (see O.C.G.A. § 50-13-1). *Department of Human Resources v. Williams*, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Judicial review requirements met. — All requirements of Ga. L. 1965, p. 283,

§ 1 (see O.C.G.A. § 50-13-1) for judicial review are met by decisions under Ga. L. 1965, p. 385, § 12 (see O.C.G.A. § 49-4-13). *Department of Human Resources v. Williams*, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Cited in *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Ga. Dep’t of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

49-4-14. Regulations as to records; use or disclosure of information; penalty.

(a) The board is directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Department of Human Services, including the county departments, relating to public assistance. Except as otherwise provided in this Code section, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of public assistance to purposes directly connected with the administration of public assistance. The board is authorized in its discretion to include in such regulations provision for the public to have access to the records of disbursement or payment of public assistance made after March 30, 1965.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this Code section shall use such information for commercial or political purposes.

(c) Any person violating subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1965, p. 385, §§ 10, 11; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-15. Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.

(a) Any person who by means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:

(1) Any grant or payment of public assistance, food stamps, or medical assistance (Medicaid) to which he is not entitled;

(2) A larger amount of public assistance, food stamp allotment, or medical assistance (Medicaid) than that to which he is entitled; or

(3) Payment of any forfeited grant of public assistance;

or any person who, with intent to defraud the department, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor unless the total amount of the value of public assistance, food stamps, and medical assistance (Medicaid) so obtained exceeds \$500.00, in which event such person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. In determining the amount of value of public assistance, food stamps, and medical assistance obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the

total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

(b) It shall be a fraudulent device within the meaning of subsection (a) of this Code section, and punishable as therein provided, for any person:

(1) Knowingly to use, alter, or transfer food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law;

(2) Knowingly to possess food stamp coupons or authorizations to purchase food stamp coupons when he or she is not authorized by law to possess them;

(3) Knowingly to possess or redeem food stamp coupons or benefits when he or she is not authorized by law to possess or redeem them; or

(4) Knowingly to use or redeem food stamp coupons or benefits in any manner or for purposes not authorized by law.

(c)(1) Any person who obtains any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(2) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he is entitled shall also be liable to the state for the amount of such payment.

(3) Any person who receives any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(4) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, in accordance with regulations of the board which shall conform to the federal Social Security Act and federal regulations promulgated pursuant thereto, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the department. Any repayment required by this subsection may be waived by the department, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the department. Recoupment may be initiated without

regard to whether the department has obtained a judgment in a civil action but shall not be initiated prior to notice and an opportunity for a hearing in accordance with this article. The department shall make such waivers and determinations of repayment and the manner of repayment in accordance with regulations of the board which shall conform to the federal Social Security Act and the federal regulations promulgated pursuant thereto.

(d) Any felony offense under this Code section may be prosecuted by accusation as provided in Code Section 17-7-70.1.

(e)(1) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation of this Code section without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Ga. L. 1965, p. 385, § 13; Ga. L. 1973, p. 183, § 1; Ga. L. 1975, p. 477, § 1; Ga. L. 1976, p. 1490, § 1; Ga. L. 1978, p. 994, § 1; Ga. L. 1978, p. 1964, § 1; Ga. L. 1989, p. 466, § 1; Ga. L. 1996, p. 1517, §§ 1, 1.2; Ga. L. 1997, p. 1021, § 3.)

Cross references. — Fraud and related offenses, T. 16, C. 9, A. 4.

Code Commission notes. — Ga. L. 1996, p. 1517, §§ 1 and 1.2 both enacted a

subsection (d). Pursuant to Code Section 28-9-5, the subsection (d) enacted by § 1.2 was redesignated as subsection (f). See the Editor's notes.

Editor's notes. — Ga. L. 1996, p. 1517, § 1.1, not codified by the General Assembly, provided: "Section 1.2 [subsection (f)] of this Act shall be known and may be cited as the 'Two Strikes and You're Off Act.'" and § 2, not codified by the General Assembly, provided for severability.

Ga. L. 1996, p. 1517, § 3, not codified by the General Assembly, provided: "No later than July 1, 1996, the Department of Human Resources shall request from the appropriate federal agencies any waivers necessary to implement any part of this Act. Each portion of this Act for which such waiver is required shall become effective only if the waiver is obtained, and in that event shall become effective upon the ninetieth day following the receipt of such waiver. The remainder of this Act shall become effective July 1, 1996."

Pursuant to Ga. L. 1996, p. 1517, § 3,

waivers were applied for regarding those provisions of subsection (f) relating to public assistance. However, passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" eliminated the need for such waivers, effective July 1, 1997. The provisions of subsection (f) enacted by Ga. L. 1996, p. 1517, § 1.2 regarding medical assistance and food stamps did not become effective because the requisite federal waivers were not obtained.

Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — The federal Social Security Act, referred to in paragraph (c)(4) of this Code section, is codified at 42 U.S.C. § 301 et seq.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

For review of 1996 social services legislation, see 13 Ga. U. L. Rev. 310 (1996).

JUDICIAL DECISIONS

Constitutionality. — This section is not unconstitutionally vague in that the statute makes it a crime to receive public assistance to which a person is "not entitled" without defining "entitlement" or referring to statutes, rules, or regulations pursuant to which entitlement is determined. *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

Construction of "may" in waiver clause. — Word "may" in this section's waiver clause affects the rights of needy dependent children to receive financial assistance under the Georgia Aid to Families with Dependent Children; therefore, it is clear that the word "may" must be construed as mandatory rather than permissive. *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972).

Commissioner required to exercise discretion before recouping overpayments. — This section requires the director of the Department of Family and Children Services (now Commissioner of Human Resources) to exercise discretion by considering the need of dependent children before recouping overpayments in

Aid to Families with Dependent Children. *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972).

Effect of state's failure to offer certified copy of regulations. — State fell short of the required proof for felony conviction by failing to offer in evidence a certified copy of the regulations of the Department of Human Resources. *Dix v. State*, 156 Ga. App. 868, 275 S.E.2d 807 (1981).

Guilty plea not bar to prosecution for subsequent fraud. — Defendant's plea of guilty to fraudulently obtaining \$3,796 in public assistance payments between March 1985 and March 1986, would not bar the state from prosecuting defendant for the subsequent fraudulent obtaining of \$1,585 in public assistance payments between August 1987 and January 1988. *Neal v. State*, 198 Ga. App. 13, 400 S.E.2d 375 (1990).

Repayment by custodial parent excuses non-custodial's non-payment. — Noncustodial father was held to be not liable for child support overpayments when the evidence demonstrated that the

custodial parent, the mother, was in the process of making repayment. *Johnson v. Department of Human Resources*, 204 Ga. App. 23, 418 S.E.2d 401 (1992).

Sufficiency of evidence. — Although the evidence was sufficient to prove that the defendant committed fraud that resulted in the defendant obtaining more public assistance than the defendant was entitled to receive under O.C.G.A. § 49-4-15(a), the state failed to prove that the amount exceeded \$500. *Ousley v.*

State, 296 Ga. App. 486, 675 S.E.2d 226 (2009).

Cited in *Anderson v. Department of Family & Children Servs.*, 118 Ga. App. 318, 163 S.E.2d 328 (1968); *Gill v. State*, 141 Ga. App. 823, 234 S.E.2d 665 (1977); *Moore v. State*, 148 Ga. App. 14, 251 S.E.2d 17 (1978); *State v. Germany*, 245 Ga. 326, 265 S.E.2d 13 (1980); *Graham v. State*, 154 Ga. App. 198, 267 S.E.2d 842 (1980); *In re Judge No. 491*, 249 Ga. 30, 287 S.E.2d 2 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Liability provided for in Ga. L. 1965, p. 385, § 13 (see O.C.G.A. § 49-4-15) survives the death of a recipient and constitutes a claim against the recipient's estate even if considered as a cause of action in tort rather than a cause of action in contract inasmuch as

Ga. L. 1952, p. 224, § 1 (see O.C.G.A. § 9-2-41) provides that a cause of action in tort shall survive the death of the tortfeasor when the tortfeasor received a benefit from the tort. 1965-66 Op. Att'y Gen. No. 66-250.

RESEARCH REFERENCES

ALR. — Reimbursement of public for financial assistance to aged persons, 29 ALR2d 731.

Criminal liability for wrongfully obtaining unemployment benefits, 80 ALR3d 1280.

Criminal liability in connection with application for, or receipt of, public relief or welfare payments, 22 ALR4th 534.

Imposition of civil penalties, under state statute, upon medical practitioner

for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 ALR4th 671.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 ALR5th 390.

Liability of state or federal government for losses associated with distribution of food stamps, 116 ALR Fed. 457.

49-4-15.1. Examination of financial records in instances of alleged fraud.

The department may examine any books, papers, or memoranda reflecting the income of, or financial records bearing upon the determination of the eligibility of, recipients in instances of alleged fraud by recipients of food stamps and public assistance. This process may be implemented by means of a subpoena which may be issued by the commissioner of human services, upon the advice of the State Department of Law. In order to consider the issuance of such subpoenas, the director of the department's office of fraud and abuse must personally make application in writing to the commissioner of human services specifying why such information is necessary. If issued, such subpoenas shall compel the production of relevant documents. Subpoenas shall be served in the same manner as if issued by a superior court. If any

person fails to obey a subpoena issued and served under this Code section with respect to any matter germane to the department's investigation, on application of the department, through the commissioner of human services or the commissioner's duly authorized representative, the superior court of the county in which the documents were required to be produced may issue an order requiring the person to comply with the subpoena and to produce the relevant documents. (Code 1981, § 49-4-15.1, enacted by Ga. L. 1987, p. 1435, § 2; Ga. L. 1997, p. 1021, § 4; Ga. L. 2009, p. 453, § 2-4/HB 228.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability. ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

Law reviews. — For article comment-

49-4-16. Research, demonstration, and work experience programs; surplus food distribution.

(a) Except as modified by and pursuant to the provisions of this article the same provisions concerning eligibility for assistance as obtain with respect to old-age assistance, aid to the blind, temporary assistance for needy families, and aid to the totally and permanently disabled shall remain in force and effect.

(b) The department is authorized to enter into agreements with departments and agencies of the government of the United States for the purposes of accepting grants, providing matching funds, and administering of such grants and funds, in accordance with regulations to be promulgated, for research and demonstration projects under Title XI, Section 1115, of the federal Social Security Act, without regard to the factor of state wideness and such other factors as may be required to be waived by the terms of the federal grant. The department also shall be authorized to participate in work experience or any other projects authorized under Title V of the Economic Opportunity Act of 1964, P.L. 88-452, 78 Stat. 508, and in the distribution of surplus food through a food stamp program under 7 U.S.C., Section 2013. (Ga. L. 1965, p. 385, § 15; Ga. L. 1994, p. 97, § 49; Ga. L. 1997, p. 1021, § 7.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title XI, Section 1115 of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1315.

Title V of the federal Economic Oppor-

tunity Act of 1964, referred to in this Code section, was formerly codified at 42 U.S.C. § 2921 et seq. but was repealed by Pub. L. 97-35, Title VI, § 683 (a).

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

49-4-17. Funding costs of assistance and administration; county participation not required.

The cost of administration and the cost of public assistance provided under any of the categories of public assistance authorized under Code Section 49-4-3 shall be met from such funds as shall be made available therefor from state and federal appropriations. No county shall be required to participate in the cost of such public assistance or in the cost of the administration thereof. (Ga. L. 1965, p. 385, § 17; Ga. L. 1970, p. 451, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

FICA contributions considered as costs of administration. — For purposes of this section, social security (FICA) employer contributions can be considered as “costs of administration” of public assistance. 1971 Op. Att’y Gen. No. 71-36.

49-4-17.1. Establishment of pilot community work experience programs.

Repealed by Ga. L. 1986, p. 410, § 1, effective July 1, 1986.

Editor’s notes. — This Code section was based on Ga. L. 1982, p. 1281 and Ga. L. 1984, p. 22.

49-4-18. Article construed with federal Social Security Act; adoption of rules to comply with federal act.

It is the intention of the General Assembly that this article be construed consistent with the federal Social Security Act, and any provision of this article found to be in conflict with the federal Social Security Act shall be deemed to be void and of no effect. It is further the intention of the General Assembly, in view of the joint state and federal financial participation in the assistance programs, that the department shall be authorized to adopt such regulations as may be necessary to comply with the requirements of the federal Social Security Act. (Ga. L. 1965, p. 385, § 16.)

U.S. Code. — The federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 301 et seq.

JUDICIAL DECISIONS

Cited in James v. Harden, 136 Ga. App. 207, 221 S.E.2d 67 (1975); Cox v. Dep’t of Human Resources, 255 Ga. 6, 334 S.E.2d 683 (1985).

RESEARCH REFERENCES

ALR. — Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up “state plan” contemplated by it, 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220; 121 ALR 1002.

Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 ALR4th 215.

49-4-19. Social assistance register.

It shall be the duty of the department to establish and maintain a social assistance register and to provide for the listing in such register of groups, associations, organizations, and individuals who notify the department or any county department of family and children services that they are willing to assist citizens who are receiving public assistance or who need aid to improve or ensure the quality of their lives. The department shall provide for the dissemination of the names of such entities and individuals to those in need of assistance. It shall be the further duty of the department to publicize the existence of the social assistance register and to inform the public of the opportunities which members of the public have to enrich the lives of others. (Code 1981, § 49-4-19, enacted by Ga. L. 1997, p. 1021, § 4A.)

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

ARTICLE 2

OLD-AGE ASSISTANCE

Cross references. — Ombudsman program for elderly persons residing in long-term care facilities, § 31-8-50 et seq.

Reporting of abuse or exploitation of elderly persons residing in long-term care facilities, § 31-8-80 et seq.

49-4-30. Short title.

This article may be cited as the “Old-Age Assistance Act.” (Ga. L. 1937, p. 311, § 20; Ga. L. 1982, p. 3, § 49.)

49-4-31. Definitions.

As used in this article, the term:

(1) “Applicant” means a person who has applied for assistance under this article.

(2) “Assistance” means money payments to, medical care in behalf of, or any type of remedial care recognized under state law in behalf

of needy individuals who are 65 years of age or older but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental health or developmental disability services.

(3) "Recipient" means a person who has received assistance under this article. (Ga. L. 1937, p. 311, § 1; Ga. L. 1957, p. 368, § 1; Ga. L. 1962, p. 683, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228.)

49-4-32. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any person who:

(1) Is 65 years of age or older;

(2) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(3) Is not, at the time of receiving assistance, an inmate or patient of any public institution, except as a patient in a medical institution. An inmate or patient of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(5) Has been a bona fide resident of this state for not less than one year; and

(6) Is not receiving assistance under Article 3 of this chapter.

(b) No applicant shall be required to subscribe to a pauper's oath in order to be eligible for assistance under this article.

(c) Final conviction of a crime or criminal offense and detention of one so convicted either by this state or by any subdivision thereof shall constitute a forfeiture or suspension of all rights to assistance under this article but only during the period of actual confinement. (Ga. L. 1937, p. 311, § 2.)

JUDICIAL DECISIONS

Cited in *Bryson v. Burson*, 308 F. Supp. 1170 (N.D. Ga. 1969).

OPINIONS OF THE ATTORNEY GENERAL

United States Supreme Court decisions control validity of residency statutes. — Validity of the residency statutes concerning eligibility for public assistance would be held invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att’y Gen. No. 69-238.

State employees not disqualified from receiving assistance. — If an ap-

plicant for old age assistance is otherwise qualified, the fact that such applicant is employed by the state would not disqualify the applicant from receiving old age assistance to provide the applicant with a reasonable subsistence compatible with decency and health. 1945-47 Op. Att’y Gen. p. 645.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 77, 85.

ALR. — Requisite residence for purposes of old age assistance, 43 ALR2d 1427.

Social Security Acts: requisite of employment as affected by family relation-

ship between alleged employer and employee, 8 ALR3d 696.

Unemployment compensation: eligibility of employee laid off according to employer’s mandatory retirement plan, 50 ALR3d 880.

49-4-33. Duties of department under this article.

The department shall:

(1) Supervise the administration of assistance under this article by the county departments;

(2) Take such action as may be necessary or desirable for carrying out this article;

(3) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable; and

(4) Publish in print or electronically an annual report and such interim reports as may be necessary. (Ga. L. 1937, p. 311, § 4; Ga. L. 2010, p. 838, § 10/SB 388.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 75, 76.

49-4-34. Duties of county departments under this article.

The county departments shall:

(1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the board pursuant to this article;

(2) Report to the department at such times and in such manner and form as the department may from time to time direct; and

(3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1937, p. 311, § 5.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 75, 76.

49-4-35. Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1937, p. 311, § 11; Ga. L. 1950, p. 316, § 1.)

49-4-36. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1937, p. 311, § 16; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-37. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that

may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1937, p. 311, § 19.)

49-4-38. Roll book of employees.

Each county board shall maintain for public information a roll book giving the name and address of and salary paid each employee of the county board in the county. (Ga. L. 1937, p. 311, § 19A.)

ARTICLE 3

AID TO THE BLIND

Cross references. — Georgia Industries for the Blind, T. 30, C. 2. Blindness education, screening, and treatment program, § 31-1-23.

49-4-50. Short title.

This article may be cited as the “Aid to the Blind Act.” (Ga. L. 1937, p. 568, § 23.)

49-4-51. Definitions; when person considered blind.

(a) As used in this article, the term:

(1) “Applicant” means a person who has applied for assistance under this article.

(2) “Assistance” means money payments to or hospital care in behalf of needy blind individuals but does not include any such payments to or care in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) nor any individual who:

(A) Is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) “Ophthalmologist” means a physician who is licensed to practice medicine in this state and who is actively engaged in the treatment of diseases of the human eye.

(4) “Optometrist” means an individual who is licensed and registered to practice optometry in this state and who is actively engaged in the measurement of the powers of vision of the human eye.

(5) “Recipient” means a person who has received assistance under this article.

(6) “Supplementary services” means services other than money payments to blind persons in need.

(b) A person shall be considered blind for the purposes of this article if his vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. The department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this article. (Ga. L. 1937, p. 568, §§ 1, 2; Ga. L. 1952, p. 233, § 1; Ga. L. 1957, p. 368, § 4; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228.)

49-4-52. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any blind person who:

(1) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health, except that, after March 1, 1961, in making such determination, the first \$85.00 per month of earned income plus one-half of earned income in excess of \$85.00 per month shall be disregarded;

(2) Has been a bona fide resident of the state for not less than one year;

(3) Is not receiving old-age assistance; and

(4) Is not publicly soliciting alms in any part of this state by the wearing, carrying, or exhibiting of signs denoting blindness, by the carrying of receptacles for the reception of alms, by the doing of such acts by proxy, or by begging from house to house.

(b) All assistance under this article shall be suspended in the event of and during the period of confinement in any public penal institution after final conviction of a crime against the laws of this state or any political subdivision thereof. (Ga. L. 1937, p. 568, § 3; Ga. L. 1952, p. 233, §§ 4, 6; Ga. L. 1961, p. 415, § 1; Ga. L. 1965, p. 385, § 19.)

JUDICIAL DECISIONS

Cited in *Bryson v. Burson*, 308 F. Supp. 1170 (N.D. Ga. 1969).

OPINIONS OF THE ATTORNEY GENERAL

United States Supreme Court decisions control validity of residency statutes. — Validity of the residency statutes concerning eligibility for public assis-

tance would be held invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att'y Gen. No. 69-238.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 188.

ALR. — Status of one as poor person for purposes of statutes entitling him to relief or providing for compensation of persons who render services or aid, as affected by extent of his financial resources, 98 ALR 870.

Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 ALR5th 455.

49-4-53. Duties of department under this article.

The department shall:

- (1) Supervise the administration of assistance under this article by the county departments;
- (2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;
- (3) Establish the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance;
- (4) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable;
- (5) Publish in print or electronically an annual report and such interim reports as may be necessary;
- (6) Designate a suitable number of ophthalmologists and optometrists to examine applicants and recipients of assistance to the blind;
- (7) Fix the fees to be paid to ophthalmologists and optometrists for examinations of applicants, such fees to be paid out of funds allocated to the department or to the county departments; and
- (8) Initiate or cooperate with other agencies in developing measures for the prevention of blindness; the restoration of eyesight; the vocational adjustment of blind persons, including employment in regular industries, independent business, sheltered workshops, or home industry; and the instruction of the adult blind in their homes. (Ga. L. 1937, p. 568, § 5; Ga. L. 1952, p. 233, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189 et seq.

49-4-54. Duties of county departments under this article.

The county departments shall:

(1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the Board of Human Services pursuant to this article;

(2) Report to the Department of Human Services at such times and in such manner and form as the department may from time to time direct; and

(3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1937, p. 568, § 6; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189 et seq.

49-4-55. Examination of applicant by ophthalmologist or optometrist.

No application for assistance under this article shall be approved until the applicant has been examined by an ophthalmologist or optometrist designated or approved by the department to make such examinations. The examining ophthalmologist or optometrist shall certify the findings of the examination in writing upon forms provided by the department. (Ga. L. 1937, p. 568, § 9; Ga. L. 1952, p. 233, § 3.)

Cross references. — Licensing of optometrists generally, T. 43, C. 30.

49-4-56. Reexamination of recipient's eyesight; furnishing information.

A recipient shall submit to a reexamination as to his eyesight when required to do so by the county department or the Department of Human Services. He shall also furnish any information required by the county department or the Department of Human Services. (Ga. L. 1937, p. 568, § 15; Ga. L. 1982, p. 3, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-57. Providing supplementary treatment services.

Supplementary services may be provided by a county department to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind as defined in subsection (b) of Code Section 49-4-51, if he is otherwise qualified for assistance under this article. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the department. (Ga. L. 1937, p. 568, § 16.)

49-4-58. Assistance is neither assignable nor subject to legal process; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1937, p. 568, § 12; Ga. L. 1950, p. 287, § 1.)

RESEARCH REFERENCES

ALR. — Voluntary or involuntary bankruptcy proceedings in case of incompetent or infant, 125 ALR 1292.

49-4-59. Recovery of assistance payments from recipient's estate; federal share of amounts recovered.

(a) The total amount of assistance paid under this article shall be allowed as a claim against the estate of a deceased recipient after funeral expenses, not to exceed \$75.00, and the expense of administering the estate have been paid; provided, however, that no claim shall be enforced against any real estate of a recipient while it is occupied by his or her surviving spouse or dependent.

(b) The federal government shall be entitled to a share of any amounts collected under subsection (a) of this Code section from recipients or from their estates, if required as a condition to federal financial participation in assistance under this article, equal to not

more than one-half of the amount collected; and this amount shall be specified by the department. The amount due the United States shall be paid promptly to it by the department. (Ga. L. 1937, p. 568, § 18.)

49-4-60. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1937, p. 568, § 19; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-61. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1937, p. 568, § 22.)

ARTICLE 4

AID TO THE DISABLED

49-4-80. Definitions.

As used in this article, the term:

(1) "Applicant" means a person who has applied for assistance under this article.

(2) "Assistance" means money payments to, or hospital care in behalf of, needy individuals who are totally and permanently disabled but does not include any such payments to or care in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual:

(A) Who is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Who has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) "Recipient" means a person who has received assistance.

(4) "Totally and permanently disabled" means any person not less than 18 nor more than 65 years of age who has a medically demonstrable disability which is permanent and which renders him incapable of performing any gainful occupation within his competence. (Ga. L. 1952, p. 15, § 1; Ga. L. 1957, p. 368, § 6; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228.)

JUDICIAL DECISIONS

Cited in *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972); *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Pugh v. Department of Human Resources*, 132 Ga. App. 60, 207 S.E.2d 542 (1974); *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

RESEARCH REFERENCES

ALR. — Admissibility of opinion evidence as to employability on issue of disability in health and accident insurance and workers' compensation cases, 154 ALR 427; 89 ALR3d 783.

49-4-81. Eligibility for assistance under this article.

(a) Assistance is to be granted under this article to any person who:

(1) Is not less than 18 nor more than 65 years of age;

(2) Is totally and permanently disabled as that term is defined in Code Section 49-4-80;

(3) Does not have sufficient income or other resources to provide a subsistence compatible with decency and health;

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(5) Has been a bona fide resident of the state for not less than one year; and

(6) Is not receiving old-age assistance, aid to the blind, or aid to dependent children.

(b) No applicant shall be required to subscribe to a pauper's oath in order to be eligible for assistance under this article. (Ga. L. 1952, p. 15, § 2; Ga. L. 1964, p. 665, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was added.

Law reviews. — For article, "Special Needs Trusts: A Planning Tool with Promises," see 16 (No. 2) Ga. St. B.J. 18 (2010).

JUDICIAL DECISIONS

Cited in *Bryson v. Burson*, 308 F. Supp. 1170 (N.D. Ga. 1969); *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972); *James v. Harden*, 136 Ga. App. 207, 221 S.E.2d 67 (1975); *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

OPINIONS OF THE ATTORNEY GENERAL

United States Supreme Court decisions control validity of residency statutes. — Validity of the residency statutes concerning eligibility for public assistance would be held invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att’y Gen. No. 69-238.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 195, 197.
ALR. — Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.
Necessity and sufficiency of showing that “substantial and gainful activity” is available to disability claimant under Federal Social Security Act, 22 ALR3d 440.

49-4-82. Duties of department under this article.

The department shall:

- (1) Supervise the administration by the county departments of assistance to the needy totally and permanently disabled under this article;
- (2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;
- (3) Prescribe the form of and print and supply to the county department such forms as it may deem necessary and advisable; and
- (4) Publish in print or electronically an annual report and such interim reports as may be necessary. (Ga. L. 1952, p. 15, § 4; Ga. L. 2010, p. 838, § 10/SB 388.)

JUDICIAL DECISIONS

Cited in *Gartrell v. McGahee*, 216 Ga. 125, 114 S.E.2d 871 (1960).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 196.

49-4-83. Duties of county departments under this article.

The county departments shall:

(1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the board pursuant to this article;

(2) Report to the department at such times and in such manner and form as the department may from time to time direct; and

(3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1952, p. 15, § 5.)

49-4-84. Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1952, p. 15, § 9.)

49-4-85. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1952, p. 15, § 13; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-4-86. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1952, p. 15, § 16.)

ARTICLE 5**AID TO FAMILIES WITH DEPENDENT CHILDREN****49-4-100 through 49-4-119.**

Reserved. Repealed by Ga. L. 1997, p. 1021, § 5, effective April 22, 1997.

Editor's notes. — Ga. L. 1997, p. 1021, § 5, effective April 22, 1997, repealed and reserved this article. This article was based on Ga. L. 1937, p. 630, §§ 1, 2, 4, 5, 11, 13, and 14; Ga. L. 1950, p. 307, § 1; Ga. L. 1952, p. 253, § 1; Ga. L. 1957, p. 368, § 5; Ga. L. 1963, p. 291, §§ 1 - 3; Ga. L. 1964, p. 125, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1984, p. 1426, § 1; Ga. L. 1986, p. 410, § 2; Ga. L. 1986, p. 881, § 1; Ga. L. 1988, p. 1720, § 15; Ga. L. 1992, p.

6, § 49; Ga. L. 1992, p. 2772, § 2; Ga. L. 1992, p. 3044, §§ 1, 2; Ga. L. 1993, p. 1969, §§ 1, 2; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 765, §§ 1, 2; Ga. L. 1995, p. 1155, §§ 2, 2.1.

Code Sections 49-4-118 and 49-4-119, enacted by Ga. L. 1995, p. 1155, §§ 2 and 2.1, respectively, were repealed by Ga. L. 1997, p. 1021, § 5 prior to their effective dates.

ARTICLE 6**MEDICAL ASSISTANCE FOR AGED****49-4-120 through 49-4-128.**

Reserved. Repealed by Ga. L. 1999, p. 296, § 16, effective July 1, 1999.

Editor's notes. — Ga. L. 1999, p. 296, § 16, effective July 1, 1999, repealed and reserved this article. The former article, concerning "The Medical Assistance for the Aged Act", consisted of Code Sections 49-4-120 through 49-4-128 and was based on Ga. L. 1961, p. 170, §§ 1 through 6, and

8 through 10; Ga. L. 1982, p. 3, § 49; Ga. L. 1994, p. 97, § 49.

Code Section 49-4-121 was amended by Ga. L. 1999, p. 81, § 49. However, this amendment was not given effect due to the reserving of this article by Ga. L. 1999, p. 296, § 16.

ARTICLE 7**MEDICAL ASSISTANCE GENERALLY**

Cross references. — Hospital care for the indigent generally, § 31-8-1 et seq.

Determination of responsibility of parties to pay costs of treatment for mental ill-

ness, mental retardation, and alcoholism, §§ 37-3-121, 37-4-81, 37-7-121, T. 37, C. 9.

Administrative rules and regulations. — Department of Medical Assis-

tance, Official Compilation of the Rules and Regulations of the State of Georgia, Title 350.

JUDICIAL DECISIONS

Authority of Department of Medical Assistance (now Department of Community Health) regarding branch offices of home health services. — Failure of a provider under the Home Health Services Program of the Georgia Medicaid Program to satisfy Department of Medical Assistance (DMA) (now Department of Community Health) regulations governing the geographic lo-

cation of branch facilities authorized the DMA to disallow reimbursement, even if the federal Health Care Financing Administration and the Department of Human Resources had approved the provider's branch organizational structure. *ABC Home Health Servs., Inc. v. Georgia Dep't of Medical Assistance*, 211 Ga. App. 496, 439 S.E.2d 696 (1993).

RESEARCH REFERENCES

ALR. — Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 ALR4th 1056.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women, 20 ALR4th 1166.

49-4-140. Short title.

The short title for this article shall be the "Georgia Medical Assistance Act of 1977." (Ga. L. 1977, p. 384, § 2.)

Law reviews. — For article, "Privatization of Rural Public Hospitals: Implica-

tions for Access and Indigent Care," see 47 Mercer L. Rev. 991 (1996).

JUDICIAL DECISIONS

Cited in Feminist Women's Health Ctr. v. Burgess, 282 Ga. 433, 651 S.E.2d 36 (2007).

49-4-141. Definitions.

As used in this article, the term:

(1) "Applicant for medical assistance" means a person who has made application for certification as being eligible, generally, to have medical assistance paid in his or her behalf pursuant to the state plan and whose application has not been acted upon favorably.

(2) "Board" means the Board of Community Health established under Chapter 2 of Title 31.

(3) "Commissioner" means the commissioner of the department.

(4) “Department” means the Department of Community Health established under Chapter 2 of Title 31.

(5) “Medical assistance” means payment to a provider of a part or all of the cost of certain items of medical or remedial care or service rendered by the provider to a recipient of medical assistance, provided such items are rendered and received in accordance with such provisions of Title XIX of the federal Social Security Act of 1935, as amended, regulations promulgated pursuant thereto by the secretary of health and human services, all applicable laws of this state, the state plan, and regulations of the department which are in effect on the date on which the items are rendered.

(6) “Provider of medical assistance” means a person or institution, public or private, which possesses all licenses, permits, certificates, approvals, registrations, charters, and other forms of permission issued by entities other than the department, which forms of permission are required by law either to render care or to receive medical assistance in which federal financial participation is available and which meets the further requirements for participation prescribed by the department and which is enrolled, in the manner and according to the terms prescribed by the department, to participate in the state plan.

(7) “Recipient of medical assistance” means a person who has been certified eligible, pursuant to the state plan, to have medical assistance paid in his or her behalf.

(8) “State plan” means all documentation submitted by the commissioner in behalf of the department to and for approval by the secretary of health and human services, pursuant to Title XIX of the federal Social Security Act, as amended (Act of July 30, 1965, P.L. 89-97, Stat. 343, as amended).

(9) “Third party” means an individual, institution, corporation, or public or private agency, other than the department, that is legally liable to pay all or any part of the medical costs incurred by a recipient of medical assistance on account of any sickness, injury, disease, or disability to such a recipient. (Ga. L. 1977, p. 384, § 3; Ga. L. 1979, p. 1293, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 1999, p. 296, § 17; Ga. L. 2009, p. 453, § 1-7/HB 228.)

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in paragraphs (5) and (8) of this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

Public agencies as third parties. — When the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient’s settlement proceeds to recover Medicaid sums that it expended to pay providers for the

recipient's treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that the DCH's lien was invalid, the trial court properly granted the summary judgment motion of the defendant, the Commissioner of the DCH, as, contrary to the recipient's contentions, the DCH's lien under O.C.G.A. § 49-4-149(a) was not invalid even though the DCH was seeking to enforce the lien against another public agency (the board of regents of Georgia's university system,

doing business as a medical college) because § 49-4-149(a) allowed the lien against moneys owed by a third party for its liability leading to the recipient's injury and, applying the definitions in O.C.G.A. § 49-4-141(4) and (9), third parties included other public agencies. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Cited in *State v. Stuckey Health Care, Inc.*, 189 Ga. App. 126, 375 S.E.2d 235 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortion. — Georgia's statutory language that assures payment for items of care "rendered and received in accordance with" the Social Security Act indicates that state funds, like federal funds, should

not be used to pay for any abortions except those in cases where the mother's life would be threatened if the fetus were carried to term. 1977 Op. Att'y Gen. No. 77-64.

RESEARCH REFERENCES

ALR. — Transsexual surgery as covered operation under state medical assistance program, 2 ALR4th 775.

49-4-142. Department of Community Health established; adoption, administration, and modification of state plan; drug application fees.

(a) The Department of Community Health established under Chapter 2 of Title 31 is authorized to adopt and administer a state plan for medical assistance in accordance with Title XIX of the federal Social Security Act, as amended (Act of July 30, 1965, P.L. 89-97, 79 Stat. 343, as amended), provided such state plan is administered within the appropriations made available to the department. The department is authorized to establish the amount, duration, scope, and terms and conditions of eligibility for and receipt of such medical assistance as it may elect to authorize pursuant to this article. Further, the department is authorized to establish such rules and regulations as may be necessary or desirable in order to execute the state plan and to receive the maximum amount of federal financial participation available in expenditures made pursuant to the state plan; provided, however, the department shall establish reasonable procedures for notice to interested parties and an opportunity to be heard prior to the adoption, amendment, or repeal of any such rule or regulation. The department is authorized to enter into such reciprocal and cooperative arrangements with other states, persons, and institutions, public and private, as it may deem necessary or desirable in order to execute the state plan.

(b) The department shall, not later than June 1, 1986, implement a modification of the state plan for medical assistance or any affected rules or regulations of the department, which modification will allow supplementation by relatives or other persons for a private room or private sitter or both for a recipient of medical assistance in a nursing home. The modification to the plan or to any affected rules and regulations shall be effective unless and until federal authorities rule that such modification is out of compliance with federal regulations. Such modification of the state plan for medical assistance or rules and regulations:

(1) Shall provide that a provider of nursing home services in either a skilled care facility or an intermediate care facility shall be obligated to provide a recipient of medical assistance only semiprivate accommodations which meet the other requirements of appropriate regulations;

(2) Shall provide that at no time can more than 10 percent of a skilled care or intermediate care facility's rooms be used for Medicaid recipients for whom a private room supplementation has been made;

(3) Shall provide that payments made by relatives or other persons to a provider of medical assistance for the specific stated purpose of paying the additional costs for a private room or private sitter or both for a recipient of medical assistance in a skilled care facility or intermediate care facility shall not be considered as income when determining the amount of patient liability toward vendor payments; provided, however, that the department's entitlement to payments made by legally liable third parties shall not be diminished by this modification of the state plan;

(4) Shall provide that no provider of medical assistance shall discriminate against a recipient of medical assistance who does not have a relative or other person who is willing and able to provide supplementation; but the provision of a private room or private sitter to a recipient when supplementation is provided shall not constitute discrimination against other recipients;

(5) Shall provide that no recipient who is transferred to or admitted to a private room because of a shortage of beds in semiprivate rooms shall be discharged because the recipient does not have a relative or other person who is willing and able to provide supplementation; and

(6) May provide that the rate charged by the provider of medical assistance to the relative or other person providing supplementation for a private room for a recipient shall not exceed the difference between the maximum rate charged by the provider for a private room to or for a private pay patient and the amount which the

provider receives or will receive from the department as reimbursement for otherwise providing for the recipient's care in a semiprivate room.

(c) The department is authorized to establish drug application fees which shall be equal to the department's cost of investigating and determining whether a new drug product should be included in the Controlled Medical Assistance Drug List. Such fees shall be adjusted annually and shall be paid by the drug manufacturers at the time of application. (Ga. L. 1977, p. 384, § 4; Ga. L. 1984, p. 1647, § 1; Ga. L. 1985, p. 517, § 1; Ga. L. 1986, p. 486, § 1; Ga. L. 1990, p. 1808, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 1999, p. 296, § 18; Ga. L. 2009, p. 453, §§ 1-7, 1-52/HB 228.)

Administrative rules and regulations. — Administration and procedures for adoption, amendment, and repeal of rules and for public notice of changes in methods and standards for setting payment rates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-1 et seq.

Indigent Care Trust Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-6.

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

State's rules restricting reimbursement for abortions inconsistent with Social Security Act. — Rules promulgated by Georgia's Department of Medical Assistance (now Department of Community Health) restricting reimbursement to Medicaid enrollees for medically necessary abortions are inconsistent with Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and because the plaintiff classes will suffer irreparable injury for which there is no adequate legal remedy, the defendants, the defendants' agents and employees, must be permanently enjoined from refusing to provide Medicaid reimbursement to the members of the plaintiff classes for the provision of all medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Restrictive rules amounting to denial or reduction of required service. — Restrictions on reimbursement for abortions contained in Georgia's rules amount to a denial or reduction of a required service to an otherwise eligible recipient solely because of that eligible recipient's condition, i.e., pregnancy, and

furthermore, these restrictions are not based on medical necessity or utilization control procedures nor is any contention made by the defendants that the abortions sought by the plaintiffs were not medically necessary or presented utilization control problems; therefore, under 42 C.F.R. § 440.230(c), the Georgia Department of Medical Assistance (now Department of Community Health) must provide reimbursement for these medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Plan administrator. — In O.C.G.A. § 49-4-142(a), the General Assembly has designated the Georgia Department of Community Health as the agency authorized to adopt and administer the plan for medical assistance under the federal Medicaid program. *Ga. Dep't of Cmty. Health v. Freels*, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Minimum requirements that state's Medicaid plan must meet. — As a participating state, Georgia's Medicaid plan must meet certain minimum requirements as set out in Title XIX of the Social

Security Act. The following categories of services must be provided: (1) inpatient hospital services; (2) outpatient hospital services; (3) laboratory and x-ray services; (4)(A) skilled nursing facility services; (B) early and periodic screening and diagnosis for persons under 21 years of age; (C) family planning services and supplies; and (5) physicians' services, (whether furnished in the office, patient's home, a hospital, skilled nursing facility or elsewhere). *Doe v. Busbee*, 471 F. Supp. 1326 (N.D. Ga. 1979).

Effect of renunciation of inheritance on Medicaid benefits. — While a Medicaid claimant was entitled under

O.C.G.A. § 53-1-20 to renounce an inheritance under the will of the claimant's spouse, this did not insulate that choice from the application of Medicaid's eligibility regulations. Thus, the Georgia Department of Community Health properly denied Medicaid vendor benefits to the claimant. *Ga. Dep't of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

Cited in *Georgia Hosp. Ass'n v. Department of Medical Assistance*, 528 F. Supp. 1348 (N.D. Ga. 1982); *Brogdon v. National Healthcare Corp.*, 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortions. — Statutory language which authorizes the Department of Medical Assistance (now Department of Community Health) "to establish such rules and regulations as may be necessary or desirable in order to ... receive the maximum amount of federal financial participation as is available in expenditures made pursuant to the state plan ..." indicates that state funds, like federal funds, should not be used to pay for any abortions except those in cases where the mother's life would be threatened if the fetus were carried to term. 1977 Op. Att'y Gen. No. 77-64.

Coverage for medically necessary abortions, reporting requirements. — Georgia Department of Medical Assistance (now Department of Community

Health) must provide coverage for medically necessary abortions and may impose reasonable reporting or documentation requirements for abortions resulting from rape or incest. 1994 Op. Att'y Gen. No. U94-6.

Limitation on nursing home charges for private rooms. — Nursing home providers may not charge more than the difference between their usual private and semiprivate room rates to individuals who desire to provide private rooms for medical assistance recipients. 1985 Op. Att'y Gen. No. 85-60.

Department of Medical Assistance (now Department of Community Health) may not forbear collection of overpayments made to providers. 1980 Op. Att'y Gen. No. 80-89.

49-4-142.1. Legislative notification of request for waiver.

On and after May 3, 2006, neither the department, the board, nor any other representative of the state shall submit any request to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services for a waiver pursuant to Section 1115 of the federal Social Security Act without legislative notification. This shall apply only to waivers that relate to Medicaid modernization, Medicaid transformation, or a Medicaid reform model that would affect 20,000 or more individuals in the Georgia Medicaid population. The legislative notification required under this Code section shall be by Act of the General Assembly or the adoption of a joint resolution of the General

Assembly. (Code 1981, § 49-4-142.1, enacted by Ga. L. 2006, p. 775, § 1/SB 572; Ga. L. 2007, p. 47, § 49/SB 103.)

U.S. Code. — Section 1115 of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1315.

49-4-143. Power of Board of Community Health; Board of Medical Assistance abolished.

The Board of Community Health established under Chapter 2 of Title 31 is empowered to establish the general policy to be followed by the department. The Board of Medical Assistance which existed June 30, 1999, is abolished July 1, 1999, and no person shall be appointed to such board on or after July 1, 1999. (Ga. L. 1977, p. 384, § 5; Ga. L. 1999, p. 296, § 19; Ga. L. 2009, p. 453, § 1-7/HB 228.)

JUDICIAL DECISIONS

Cited in Georgia Hosp. Ass'n v. Department of Medical Assistance, 528 F. Supp. 1348 (N.D. Ga. 1982).

49-4-144. Chief administrative officer; powers and duties.

The commissioner of community health established under Chapter 2 of Title 31 shall be the chief administrative officer of the department and, subject to the general policy established by the board, shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department. (Ga. L. 1977, p. 384, § 6; Ga. L. 1981, p. 855, § 1; Ga. L. 1999, p. 296, § 19; Ga. L. 2009, p. 453, § 1-7/HB 228.)

49-4-145. Time limitations on claims for assistance; form of claims.

Claims for medical assistance must be submitted not more than six months after the month in which the service is rendered and shall be in the form prescribed by the commissioner, except that the commissioner may, where he finds that delay in submission of claims was caused by circumstances beyond the control of the provider, extend the period for submission of certain claims for a period not to exceed 12 months after the month in which the service was rendered; provided, however, that such limitations shall not apply to claims timely filed pursuant to Title XVIII of the federal Social Security Act of 1935, as amended, and reimbursements of such claims may be authorized by the department so long as federal financial participation in such reimbursements is available. (Ga. L. 1977, p. 384, § 7; Ga. L. 1981, p. 1887, § 1.)

U.S. Code. — Title XVIII of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1395 et seq.

49-4-146. Time for action on claim.

The Department of Community Health, within three months of receiving a claim submitted on or after July 1, 1978, shall pay or deny the claim. (Ga. L. 1977, p. 384, § 15A; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

Restrictions on reimbursement for abortions as denial or reduction of required service. — Restrictions on reimbursement for abortions contained in Georgia's rules amount to a denial or reduction of a required service to an otherwise eligible recipient solely because of that eligible recipient's condition, i.e., pregnancy, and furthermore, these restrictions are not based on medical necessity or utilization control procedures nor is any

contention made by the defendants that the abortions sought by the plaintiffs were not medically necessary or presented utilization control problems; therefore, under 42 C.F.R. § 440.230(c) the Georgia Department of Medical Assistance (now Department of Community Health) must provide reimbursement for these medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

49-4-146.1. Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations; notifications; authorization to obtain income eligibility verification.

(a) As used in this Code section, the term:

(1) "Agent" means any person who has been delegated the authority to obligate or act on behalf of a provider.

(2) "Convicted" means that a judgment of conviction has been entered by any federal, state, or other court, regardless of whether an appeal from that judgment is pending.

(3) "Indirect ownership interest" means any ownership interest in an entity that has an ownership interest in the provider entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the provider entity.

(4) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the institution, organization, or agency.

(5) "Payment" includes a payment or approval for payment, any portion of which is paid by the Georgia Medicaid program, or by a

contractor, subcontractor, or agent for the Georgia Medicaid program pursuant to a managed care program operated, funded, or reimbursed by the Georgia Medicaid program.

(6) "Person" means any person, firm, corporation, partnership, or other entity.

(7) "Person with an ownership or control interest" means a person who:

(A) Has ownership interest totaling 5 percent or more in a provider;

(B) Has an indirect ownership interest equal to 5 percent or more in a provider;

(C) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a provider;

(D) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the provider entity if that interest equals at least 5 percent of the value of the property or assets of the provider;

(E) Is an officer or director of a provider that is organized as a corporation; or

(F) Is a partner in a provider entity that is organized as a partnership.

(8) "Provider" means an actual or prospective provider of medical assistance under this chapter. The term "provider" shall also include any managed care organization providing services pursuant to a managed care program operated, funded, or reimbursed by the Georgia Medicaid program.

(b) It shall be unlawful:

(1) For any person or provider to obtain, attempt to obtain, or retain for himself, herself, or any other person any medical assistance or other benefits or payments under this article, or under a managed care program operated, funded, or reimbursed by the Georgia Medicaid program, to which the person or provider is not entitled, or in an amount greater than that to which the person or provider is entitled, when the assistance, benefit, or payment is obtained, attempted to be obtained, or retained, by:

(A) Knowingly and willfully making a false statement or false representation;

(B) Deliberate concealment of any material fact; or

(C) Any fraudulent scheme or device; or

(2) For any person or provider knowingly and willfully to accept medical assistance payments to which he or she is not entitled or in an amount greater than that to which he or she is entitled or knowingly and willfully to falsify any report or document required under this article.

(c) Any person violating paragraph (1) or (2) of subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished for each offense by a fine of not more than \$10,000.00, or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment. In any prosecution under this Code section, the state has the burden of proving beyond a reasonable doubt that the defendant intentionally committed the acts for which he or she is charged.

(c.1)(1) Any person committing abuse shall be liable for a civil monetary penalty equal to two times the amount of any excess benefit or payment. This penalty shall be collected on the same terms as a penalty imposed pursuant to subsection (d) of this Code section, except as to the amount specified in items (1) and (2) of that subsection, but shall not be imposed cumulatively with a penalty under such subsection.

(2) Abuse is defined as a provider knowingly obtaining or attempting to obtain medical assistance or other benefits or payments under this article to which the provider knows he or she is not entitled when the assistance, benefits, or payments are greater than an amount which would be paid in accordance with those provisions of the department's policies and procedures manual which are adopted pursuant to public notice, and the assistance, benefits, or payments directly or indirectly result in unnecessary costs to the medical assistance program. Isolated instances of unintentional errors in billing, coding, and costs reports shall not constitute abuse. Miscoding shall not constitute abuse if there is a good faith basis that the codes used were appropriate under the department's policies and procedures manual and there was no deceptive intent on the part of the provider.

(d) In addition to any other penalties provided by law, each person violating subsection (b) of this Code section shall be liable to a civil penalty equal to the greater of (1) three times the amount of any such excess benefit or payment or (2) \$1,000.00 for each excessive claim for assistance, benefit, or payment. Additionally, interest on the penalty shall be paid at the rate of 12 percent per annum from the date of payment of any such excessive amount, or from the date of receipt of any claim for an excessive amount when no payment has been made, until the date of payment of such penalty to the department.

(e)(1) Whenever the commissioner proposes to recover an amount provided for in subsection (d) of this Code section, he shall give 30

days' written notice of his intended actions. The notice shall inform the person in violation of subsection (b) of this Code section of his right to a hearing, the method by which he may obtain a hearing, and that he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or that he may represent himself.

(2) All hearings held by virtue of this subsection shall be conducted in the same manner as any other contested case within the department and shall be subject to the rules and regulations regarding hearings within the department. As in all contested cases within the department, the person against whom the commissioner is proceeding under this subsection shall have the right to appeal any adverse administrative decision to the superior court of the county of his residence or to the Superior Court of Fulton County once he exhausts all administrative remedies within the department.

(3) If the person against whom the commissioner is proceeding under this subsection fails to request a hearing or fails to exhaust all administrative remedies within the department, then his case shall be treated as an unappealed administrative decision. In any unappealed administrative decision where the aggrieved party fails to request a hearing or fails to exhaust all administrative remedies, the commissioner shall issue an order to the person against whom the commissioner is proceeding, directing payment of any amount found to be due pursuant to subsection (d) of this Code section within ten days after service of the order. Upon failure to comply with the commissioner's order, the commissioner may issue a certificate to the clerk of the superior court of the county of residence of the person who is the subject of the order. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon, the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, that the debt is owed to the state, a designation of the statute under which such amount is found to be due, the amount due, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the superior court. Such entry on the docket by the commissioner shall be without prejudice to the right of the aggrieved party to contest such entry by affidavit of illegality or as otherwise provided by law.

(f) The department may refuse to accept a statement of participation, deny a request for reinstatement, refuse to exercise its option to renew a statement of participation, suspend or withhold those payments arising from fraud or willful misrepresentation under the Medicaid program, or terminate the participation of any provider other than a natural person if that provider or any person with an ownership or

control interest or any agent or managing employee of such provider has been:

(1) Convicted of violating paragraph (1) or (2) of subsection (b) of this Code section;

(2) Convicted of committing any other criminal offense related to any program administered under Title XVIII, XIX, or XX of the Social Security Act of 1935, as amended; or

(3) Excluded or suspended from participation in the medicare program for fraud or abuse.

In making a decision pursuant to this subsection, the department shall consider the facts and circumstances of the specific case, including but not limited to the nature and severity of the crime or violation and the extent to which it adversely affected medical assistance recipients and the program.

(g) The department shall refuse to accept a statement of participation, deny a request for reinstatement, refuse to exercise its option to renew a statement of participation, or terminate the participation of any provider who is a natural person if that provider or any agent or managing employee of such provider has been convicted of:

(1) Violating subsection (b) of this Code section; or

(2) Committing any other criminal offense related to any program administered under Title XVIII, XIX, or XX of the Social Security Act of 1935, as amended.

(h) The department shall reinstate a provider whose participation in the medical assistance program was terminated pursuant to subsection (f) or (g) of this Code section if the conviction upon which the termination was based is reversed or vacated or if the decision of the administrative law judge is reversed in accordance with the department's rules and regulations.

(i) It shall be the duty of the department to identify and investigate violations of this article and to turn over to the prosecuting attorney, for prosecution, any information concerning any recipient of medical assistance who violates this article.

(j) As necessary to enforce the provisions of this article, the department or its duly authorized agents may submit to the state revenue commissioner the names of applicants for medical assistance or other benefits or payments provided under this article, as well as the relevant income threshold specified therein. If the department elects to contract with the state revenue commissioner for such purposes, the state revenue commissioner and his or her agents or employees shall notify the department whether or not each submitted applicant's income

exceeds the relevant income threshold provided. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No information shall be provided by the Department of Revenue to the department without an executed cooperative agreement between the two departments. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection is subject to the provisions of Code Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful divulging of confidential tax information. (Ga. L. 1981, p. 962, § 1; Ga. L. 1985, p. 1395, §§ 1, 2; Ga. L. 1994, p. 97, § 49; Ga. L. 1997, p. 679, § 1; Ga. L. 1997, p. 1596, § 1; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 1; Ga. L. 2006, p. 775, § 2/SB 572; Ga. L. 2007, p. 47, § 49/SB 103; Ga. L. 2009, p. 63, § 1/SB 165.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “Title” was substituted for “Titles” in paragraph (f)(2).

U.S. Code. — Titles XVIII, XIX, and XX of the Social Security Act of 1935, referred to in this Code section, are codified at 42 U.S.C. §§ 1395 et seq., 1396 et seq., 1397 et seq., respectively.

Section 6103 of the Internal Revenue

Code, referred to in subsection (j), is codified at 26 U.S.C. § 6103.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 276 (1997). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

Venue for crime of report falsification. — Crime of violating the Georgia Medical Assistance Act, O.C.G.A. § 49-4-140 et seq., by falsifying reports claiming reimbursement for prescriptions consisted of the act of “falsifying,” rather than the act of “submitting” or “sending,” and venue was proper in the county in which the reports were falsified, not in the county to which the reports were sent. *State v. Barber*, 193 Ga. App. 397, 388 S.E.2d 350 (1989).

Venue for Medicaid fraud. — In a Medicaid fraud case committed by a fraudulent scheme or device under O.C.G.A. § 49-4-146.1(b)(1)(C) of the Georgia Medical Assistance Act, O.C.G.A. § 49-4-140 et seq., pursuant to Ga. Const. 1983, Art. VI, Sec. II, Para. VI and O.C.G.A. § 17-2-2(a), venue is proper in any county where an act was committed in

furtherance of the fraudulent transaction; defendants committed acts in furtherance of the fraud in counties in which the defendants were tried and convicted and, thus, venue in those counties was proper and the appellate court improperly reversed the defendants’ convictions. *State v. Kell*, 276 Ga. 423, 577 S.E.2d 551 (2003).

Venue was proper in the county in which the defendant was tried for Medicaid fraud because it was the county in which the fraudulent scheme was hatched, acts in furtherance thereof were performed, and payment was received. *Kell v. State*, 262 Ga. App. 489, 585 S.E.2d 915 (2003).

Aiding and abetting commission of crime. — Even assuming the defendant could not be considered a “provider,” the wide range of activities performed, when

combined with the defendant's supervisory role in the medical office, made the defendant a party to the crime of Medicaid fraud. *Bullard v. State*, 242 Ga. App. 843, 530 S.E.2d 265 (2000).

State's authority to prosecute — Under O.C.G.A. § 49-4-146.1(c), the state has the authority to prosecute persons who violate § 49-4-146.1(b)(2), prohibiting a Medicaid provider's acceptance of payment to which the provider is not entitled, or falsifying a required report.

Bixby v. State, 254 Ga. App. 212, 561 S.E.2d 870 (2002).

Fine for Medicaid fraud deemed proper. — Defendant was properly fined \$50,000 as a condition of defendant's 10 years' probation for Medicaid fraud because, although the maximum statutory fine for the crime was \$10,000, the trial court could impose a fine up to \$100,000 as a probation condition pursuant to O.C.G.A. § 17-10-8. *Kell v. State*, 262 Ga. App. 489, 585 S.E.2d 915 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 37 Am. Jur. 2d, Fraud and Deceit, § 1 et seq.

C.J.S. — 37 C.J.S., Fraud, § 1 et seq.

ALR. — Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

Imposition of civil penalties, under

state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 ALR4th 671.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

49-4-146.2. Requirements for voluntary termination of provider agreements by nursing facilities; adjustment of medical assistance rate; decertification.

(a) As used in this Code section, the term:

(1) "Assist" means that the provider will, at a minimum, do the following:

(A) Provide the resident, the resident's legal guardian, or the resident's representative with the names, addresses, phone numbers, and contact persons at other facilities appropriate to the needs of the resident;

(B) Contact the identified facilities initially in the resident's behalf;

(C) Develop a transfer plan for each resident that addresses the individual needs of the resident during the transfer;

(D) Make arrangements for the safe and orderly transfer of the resident; and

(E) Provide the resident, guardian, or representative with counseling regarding available community resources and informing the appropriate state or social service organizations, including, but not limited to, the community or state long-term care ombudsman and assisting in arranging for the transfer or discharge.

(2) "Decertification" means and refers to termination of a facility's limited provider agreement, at such time as no Medicaid eligible residents reside in the facility.

(3) "Limited provider agreement" means and refers to an agreement between a facility and the department whereby the facility agrees to provide nursing facility services to Medicaid eligible residents and the department agrees to pay medical assistance for services rendered to Medicaid eligible residents during the period of time from termination notice to decertification.

(4) "Medicaid eligible residents" means and refers to persons:

(A) Residing in the facility as of the effective date of termination; and

(B) Who are certified as recipients of medical assistance prior to the effective date of termination.

(5) "Termination" or "terminate" refers to voluntary termination by a nursing facility of its current provider agreement with the department. Upon termination, the facility must enter into a limited provider agreement.

(b) A nursing facility may voluntarily terminate upon 60 days' written notice to the department. Such notice shall include:

(1) The reason or reasons for termination of its current provider agreement;

(2) The names and Medicaid identification numbers of all Medicaid eligible residents;

(3) The names of residents with applications pending for Medicaid eligibility and the names of any representatives authorized to act for such residents in accordance with paragraph (4) of Code Section 31-8-102;

(4) Copies of notices which the facility intends to provide to residents and applicants pursuant to subsection (d) of this Code section; and

(5) Any other information reasonably deemed by the department to be necessary to process the termination.

(c) Any facility which voluntarily terminates its participation must do so in such a manner as to minimize the harm to current residents and applicants. In meeting this requirement, the facility shall:

(1) Enter into a limited provider agreement;

(2) Meet the requirements for nursing facilities enrolled as providers of medical assistance, except as otherwise set forth in the limited provider agreement and this Code section;

(3) Assist residents who desire to leave the facility in finding alternative placement; and

(4) With regard to residents who are not Medicaid eligible residents at the time of termination, but who subsequently become Medicaid eligible residents, comply with the applicable provisions of Code Section 31-8-116 (with the exception of the second sentence of paragraph (3) of subsection (a) of said Code section).

(d) The terminating facility must meet the following notice requirements. All notices required under this subsection must be approved by the department:

(1) The facility shall notify each Medicaid eligible resident that:

(A) The facility has elected to terminate its current provider agreement;

(B) The resident may continue to reside in the facility as long as he or she continues to be a recipient of medical assistance; and

(C) Should the resident wish to transfer to another facility, the terminating facility will provide orientation and preparation for transfer and assist the resident and the department in locating alternative placement;

(2) The facility shall notify all other residents:

(A) That the facility has elected to terminate its current provider agreement;

(B) That the resident will not be entitled to have medical assistance paid on his or her behalf if he or she becomes a Medicaid eligible resident on or after the effective date of termination; and

(C) Of his or her rights pursuant to Code Section 31-8-116; and

(3) The facility shall notify all applicants on the facility's waiting list that:

(A) The facility has elected to terminate its current provider agreement;

(B) No resident admitted to the facility after the effective date of termination shall be entitled to have his or her care at such facility covered by medical assistance;

(C) The legal rights and protections that apply to all residents (regardless of source of payment) in nursing facilities enrolled as providers of medical assistance will not be available on or after the effective date of decertification;

(D) The legal rights and protections under the Georgia Bill of Rights for Residents of Long-term Care Facilities and under other

state laws will continue to be available after the effective date of decertification; and

(E) If such applicant desires to apply to other facilities, the terminating facility will assist the applicant in finding alternative placement.

(e) The terminating facility shall receive medical assistance at the per diem rate in effect at the time the facility notified the department of its intention to terminate until such time as rate adjustments are made under the state plan. At that time, the facility's medical assistance rate shall be adjusted to the state-wide average medical assistance rate paid to the class of facilities under the state plan to which the terminating facility belongs.

(f) The terminating facility shall be decertified and its limited provider agreement terminated at such time as no Medicaid eligible residents reside in the facility.

(g) A facility shall file a cost report with the department for the fiscal period ending with the effective date of termination in the manner prescribed by the department. (Code 1981, § 49-4-146.2, enacted by Ga. L. 1992, p. 1048, § 1.)

Code Commission notes. — Pursuant “Long-term” was substituted for to Code Section 28-9-5, in 1992, “Long-Term” in subparagraph (d)(3)(D).

49-4-146.3. Forfeiture of property and proceeds obtained through Medicaid fraud; fraud forfeiture proceedings; seizure of property subject to forfeiture; lien; inventory; court orders.

(a) As used in this Code section, the term:

(1) “Costs” means, but is not limited to:

(A) All expenses associated with the seizure, towing, storage, maintenance, custody, preservation, operation, or sale of the property; and

(B) Satisfaction of any security interest or lien not subject to forfeiture under this Code section.

(2) “Court costs” means, but is not limited to:

(A) All court costs, including the costs of advertisement, transcripts, and court reporter fees; and

(B) Payment of receivers, conservators, appraisers, accountants, or trustees appointed by the court pursuant to this Code section.

(3) “Interest holder” means a secured party within the meaning of Code Section 11-9-102 or the beneficiary of a perfected encumbrance pertaining to an interest in property.

(4) “Medicaid fraud” means:

(A) A violation of Code Section 49-4-146.1; or

(B) A violation relating to the obtaining of medical assistance benefits or payments under this article of any provision of:

(i) Chapter 8 of Title 16, relating to offenses involving theft;

(ii) Code Section 16-10-20, relating to false statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions; or

(iii) Code Section 16-10-21, relating to conspiracy to defraud the state or its political subdivisions.

(5) “Owner” means a person, other than an interest holder, who has an interest in property and is in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value.

(6) “Proceeds” means property derived from or realized through, directly or indirectly, Medicaid fraud and includes property of any kind without reduction for expenses incurred for acquisition, maintenance, or any other purpose.

(7) “Property” means anything of value and includes any interest in anything of value, including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any kind of privilege, interest, claim, or right.

(8) “Prosecutor” means a district attorney or his or her designee or the Attorney General or his or her designee.

(b) All property and proceeds obtained by a person or entity through or as a result of Medicaid fraud in the provision of services or equipment under this article are subject to forfeiture to the state by a Medicaid fraud forfeiture action brought by the state in accordance with this Code section. This Code section shall not apply to cases involving alleged fraud by Medicaid recipients in obtaining medical assistance benefits.

(c) A Medicaid fraud forfeiture proceeding shall be initiated by a complaint filed in the name of the State of Georgia and may be brought in the case of:

(1) An in rem action, by the prosecutor in the county in which the property is located or seized; or

(2) An in personam action, by the prosecutor in the county in which the defendant resides.

(d)(1) An action pursuant to this Code section may be commenced before or after the seizure of property.

(2) Any Medicaid fraud forfeiture action filed under this Code section shall be limited to a civil action.

(e) A property interest shall not be subject to forfeiture under this Code section if the owner of such interest or interest holder establishes that the owner or interest holder:

(1) Is not legally accountable for the conduct giving rise to its forfeiture, did not consent to it, and did not know and there is no reason why he or she should have known of the conduct or that it was likely to occur;

(2) Had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arm's length commercial transaction;

(3) With respect to conveyances for transportation only, did not hold the property jointly, in common, or in community with a person whose conduct gave rise to its forfeiture;

(4) Does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in an illegal transaction; and

(5) Acquired the interest:

(A) Before the completion of the conduct giving rise to its forfeiture, and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(B) After the completion of the conduct giving rise to its forfeiture:

(i) As a bona fide purchaser for value without knowingly taking part in an illegal transaction;

(ii) Before the filing of a lien on it and before the effective date of a notice of pending forfeiture relating to it and without notice of its seizure for forfeiture under this article; and

(iii) At the time the interest was acquired, was reasonably without cause to believe that the property was subject to forfeiture or likely to become subject to forfeiture under this article.

Upon the request of the owner or interest holder, for good cause shown, the court shall hold an expedited hearing to determine whether the property is subject to forfeiture under this Code section.

(f) A rented or leased vehicle shall not be subject to forfeiture unless it is established in forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable for the conduct which would otherwise subject the vehicle to forfeiture, consented to the conduct, or knew or reasonably should have known of the conduct or that it was likely to occur. Upon learning of the address or phone number of the company which owns any rented or leased vehicle which is present at the scene of an arrest or other action taken pursuant to this Code section, the duly authorized authorities shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

(g)(1) Property which is subject to forfeiture under this Code section may be seized by any law enforcement officer of this state or of any political subdivision thereof who has power to make arrests or execute process or a search warrant issued by any superior court having jurisdiction over the property. A search warrant authorizing seizure of property which is subject to forfeiture pursuant to this Code section may be issued at an ex parte hearing before a superior court judge of a county where the forfeiture action may be brought demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of this state, any other state, or the United States. The court may order that the property be seized on such terms and conditions as are reasonable. In entering any such seizure order, the court shall determine that appropriate conditions are included to ensure the physical safety and well-being of any recipients or patients who may be affected by such warrant and that sufficient steps will be taken to ensure that patient medical records are kept confidential. The property owner or interest holder, within ten days of the seizure of property taken pursuant to a search warrant, may make a written demand to the court with notice to the prosecutor for a hearing to determine if probable cause still exists for the seized property to be subject to forfeiture pursuant to this Code section. Said hearing shall be held within 20 days of said demand unless continued by the court for good cause.

(2) At the ex parte hearing for the issuance of a search warrant authorizing the seizure of property under paragraph (1) of this subsection, a reasonable estimate of the approximate fair market value of the property sought to be seized shall be presented to the court. Based upon such evidence, the court shall establish a bond amount for the release of any property ordered seized, not to exceed

double the fair market value of that property. The property owner or interest holder may file in the clerk's office of the court where the forfeiture action is brought, a bond with good security, conditioned for the payment of the bond amount established by the court. The bond shall be subject to approval by the clerk of the court. Upon receipt of a bond deemed acceptable by the clerk, the court which ordered the seizure of the property shall issue an order to the persons having custody of the seized property to release such property to the property owner or interest holder filing such bond, unless the property is being held as evidence. If the seized property so released is ordered to be forfeited, the state shall be entitled to entry of judgment upon such bond against the principal and sureties therein, as judgment may be entered against securities upon appeal. If the property seized is released pursuant to this paragraph and is later otherwise required to be released under any other provision of this Code section, the principal and sureties upon any bond given for the release of such property under this paragraph shall also be released from their obligations under that bond.

(h)(1) When property is seized pursuant to this article, the sheriff or law enforcement officer seizing the same shall report the fact of seizure, in writing, within 20 days thereof to the prosecutor of the judicial circuit having jurisdiction in the county where the seizure was made.

(2) Within 30 days from the date of seizure, a complaint for forfeiture shall be initiated as provided for in subsection (n), (o), or (p) of this Code section.

(3) If the state fails to initiate forfeiture proceedings against property seized for forfeiture by notice of pending forfeiture within the time limits specified in paragraphs (1) and (2) of this subsection, the property must be released on the request of an owner or interest holder, pending further proceedings pursuant to this Code section, unless the property is being held as evidence.

(i)(1) Seizure of property by a law enforcement officer constitutes notice of such seizure to any person who was present at the time of seizure who may assert an interest in the property.

(2) When property is seized pursuant to this article, the prosecutor or the sheriff or law enforcement officer seizing the same shall give notice of the seizure to any owner or interest holder who is not present at the time of seizure by personal service, publication, or the mailing of written notice:

(A) If the owner's or interest holder's name and current address are known, by either personal service or mailing a copy of the notice by certified mail or statutory overnight delivery to that address;

(B) If the owner's or interest holder's name and address are required by law to be on record with a government agency to perfect an interest in the property but the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail or statutory overnight delivery, return receipt requested, to any address on the record; or

(C) If the owner's or interest holder's address is not known and is not on record as provided in subparagraph (B) of this paragraph or the owner's or interest holder's interest is not known, by publication in two consecutive issues of a newspaper of general circulation in the county in which the seizure occurs.

(3) Notice of seizure must include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture, and the violation of law alleged.

(j) A prosecutor may file, without a filing fee, a lien for forfeiture of property upon the initiation of any civil proceeding under this article or upon seizure for forfeiture. The filing constitutes notice to any person claiming an interest in the property owned by the named person. The filing shall include the following:

(1) The lien notice must set forth:

(A) The name of the person and, in the discretion of the state, any alias and any corporations, partnerships, trusts, or other entities, including nominees, that are either owned entirely or in part or controlled by the person; and

(B) The description of the property, the civil proceeding that has been brought under this article, the amount claimed by the state, the name of the court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing;

(2) A lien under this subsection applies to the described property and to one named person and to any aliases, fictitious names, or other names, including names of corporations, partnerships, trusts, or other entities, that are either owned entirely or in part or controlled by the named person and any interest in real property owned or controlled by the named person. A separate lien for forfeiture of property must be filed for any other person;

(3) The lien creates, upon filing, a lien in favor of the state as it relates to the seized property or to the named person or related entities with respect to said property. The lien secures the amount of potential liability for civil judgment and, if applicable, the fair market value of seized property relating to all proceedings under this article enforcing the lien. The forfeiture lien referred to in this

subsection must be filed in accordance with the provisions of the laws in this state pertaining to the type of property that is subject to the lien. The state may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended. The state, as soon as practical after filing a lien, shall furnish to any person named in the lien a notice of the filing of the lien;

(4) Upon entry of judgment in favor of the state, the state may proceed to execute on the lien as in the case of any other judgment;

(5) A trustee, constructive or otherwise, who has notice that a lien for forfeiture of property, a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as the owner of record shall furnish, within ten days, to the prosecutor or the prosecutor's designee the following information:

(A) The name and address of the person or entity for whom the property is held;

(B) The names and addresses of all beneficiaries for whose benefit legal title to the seized property, or property of the named person or related entity, is held; and

(C) A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as the owner of record of the property; and

(6) A trustee, constructive or otherwise, who fails to comply with this subsection shall be guilty of a misdemeanor.

(k) Property taken or detained under this Code section is not subject to replevin, conveyance, sequestration, or attachment. The seizing law enforcement agency or the prosecutor may authorize the release of the property if the forfeiture or retention is unnecessary or may transfer the action to another agency or prosecutor by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other law enforcement agency or prosecutor. An action under this Code section may be consolidated with any other action or proceeding under this article relating to the same property on motion by an interest holder and must be so consolidated on motion by the prosecutor in either proceeding or action. The property is deemed to be in the custody of the State of Georgia subject only to the orders and decrees of the superior court having jurisdiction over the forfeiture proceedings.

(l)(1) If property is seized under this article, the prosecutor may:

(A) Remove the property to a place designated by the superior court having jurisdiction over the forfeiture proceeding;

(B) Place the property under constructive seizure by posting notice of pending forfeiture, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of seizure in any appropriate public record relating to the property;

(C) Remove the property to a storage area, within the jurisdiction of the court, for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, the prosecutor may authorize its being deposited in an interest-bearing account in a financial institution in this state. Any accrued interest shall follow the principal in any judgment with respect thereto;

(D) Provide for another governmental agency, a receiver appointed by the court pursuant to Chapter 8 of Title 9, an owner, or an interest holder to take custody of the property and remove it to an appropriate location within the county where the property was seized; or

(E) Require the sheriff or chief of police of the political subdivision where the property was seized to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) If any property which has been attached or seized pursuant to this Code section is perishable or is liable to perish, waste, or be greatly reduced in value by keeping or if the expense of keeping the same is excessive or disproportionate to the value thereof, the court, upon motion of the state, a claimant, or the custodian, may order the property or any portion thereof to be sold upon such terms and conditions as may be prescribed by the court; and the proceeds shall be paid into the registry of the court pending final disposition of the action.

(m) As soon as possible, but not more than 30 days after the seizure of property, the seizing law enforcement agency shall conduct an inventory and estimate the value of the property seized. All reasonable steps shall be taken so as not to interfere with or disrupt the provision of medical care by the provider when such inventory is conducted. Such inventory shall be conducted in a manner which assures the confidentiality of patient medical records.

(n) If the estimated value of personal property seized is \$25,000.00 or less, the prosecutor may elect to proceed under the provisions of this subsection in the following manner:

(1) Notice of the seizure of such property shall be posted in a prominent location in the courthouse of the county in which the property was seized. Such notice shall include a description of the

property, the date and place of seizure, the conduct giving rise to forfeiture, a statement that the owner of such property has 30 days within which a claim must be filed, and the violation of law alleged;

(2) A copy of the notice, which shall include a statement that the owner of such property has 30 days within which a claim must be filed, shall be served upon an owner, interest holder, or person in possession of the property at the time of seizure as provided in subsection (i) of this Code section and shall be published for at least three successive weeks in a newspaper of general circulation in the county where the seizure was made;

(3) The owner or interest holder may file a claim within 30 days after the second publication of the notice of forfeiture by sending the claim to the seizing law enforcement agency and to the prosecutor by certified mail or statutory overnight delivery, return receipt requested;

(4) The claim must be signed by the owner or interest holder under penalty of perjury and must substantially set forth:

(A) The caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(B) The address at which the claimant will accept mail;

(C) The nature and extent of the claimant's interest in the property;

(D) The date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(E) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture; and

(F) The precise relief sought;

(5) If a claim is filed, the prosecutor shall file a complaint for forfeiture as provided in subsection (o) or (p) of this Code section within 30 days of the actual receipt of the claim. A person who files a claim shall be joined as a party; and

(6) If no claim is filed within 30 days after the second publication of the notice of forfeiture, all right, title, and interest in the property are forfeited to the state and the prosecutor shall dispose of the property as provided in subsection (u) of this Code section.

(o) In rem proceedings.

(1) In actions in rem, the property which is the subject of the action shall be named as the defendant. The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a

manner required by the laws of this state. Such complaint shall describe the property with reasonable particularity; state that it is located within the county or will be located within the county during the pendency of the action; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) A copy of the complaint and summons shall be served on any person known to be an owner or interest holder and any person who is in possession of the property.

(A) Service of the complaint and summons shall be as provided in subsections (a), (b), (c), and (e) of Code Section 9-11-4.

(B) If real property is the subject of the action or the owner or interest holder is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceeding shall be published once a week for two successive weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom, but shall not constitute notice to an interest holder unless that person is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself to avoid service.

(C) If tangible property which has not been seized is the subject of the action, the court may order the sheriff or another law enforcement officer to take possession of the property. If the character or situation of the property is such that the taking of actual possession is impracticable, the sheriff shall execute process by affixing a copy of the complaint and summons to the property in a conspicuous place and by leaving another copy of the complaint and summons with the person having possession or such person's agent. In cases involving a vessel or aircraft, the sheriff or other law enforcement officer is authorized to make a written request with the appropriate governmental agency not to permit the departure of such vessel or aircraft until notified by the sheriff or the sheriff's deputy that the vessel or aircraft has been released.

(3) An owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. Any such answer shall be filed within 30 days after the service of the summons and complaint. Where service is made by publication and

personal service has not been made, an owner or interest holder shall file an answer within 30 days of the date of final publication. An answer must be verified by the owner or interest holder under penalty of perjury. In addition to complying with the general rules applicable to an answer in civil actions, the answer must substantially set forth:

(A) The caption of the proceedings as set forth in the complaint and the name of the claimant;

(B) The address at which the claimant will accept mail;

(C) The nature and extent of the claimant's interest in the property;

(D) The date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

(E) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture; and

(F) The precise relief sought.

(4) If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section.

(5) If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court with a jury unless waived by the claimant.

(6) An action in rem may be brought by the state in addition to or in lieu of any other in rem or in personam action brought pursuant to this article.

(p) In personam proceedings.

(1) The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a manner required by the laws of this state. It shall describe with reasonable particularity the property which is sought to be forfeited; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) Service of the complaint and summons shall be as follows:

(A) Except as otherwise provided in this subsection, service of the complaint and summons shall be as provided by subsections (a), (b), (c), and (d) of Code Section 9-11-4; and

(B) If the defendant is unknown or resides out of the state or departs the state or cannot after due diligence be found within the

state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two successive weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed sufficient notice to any such defendant.

(3) A defendant shall file a verified answer within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, a defendant shall file such answer within 30 days of the date of final publication. In addition to complying with the general rules applicable to an answer in civil actions, the answer must contain all of the elements set forth in paragraph (3) of subsection (o) of this Code section.

(4) Any interest holder or person in possession of the property may join any action brought pursuant to this subsection as provided by Chapter 11 of Title 9, known as the "Georgia Civil Practice Act."

(5) If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section.

(6) If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court with a jury unless waived by the claimant.

(7) On a determination of liability of a person for conduct giving rise to forfeiture under this Code section, the court must enter a judgment of forfeiture of the property described in the complaint and must also authorize the prosecutor or the prosecutor's agent or any law enforcement officer or peace officer to seize all property ordered to be forfeited which was not previously seized or was not then under seizure. Following the entry of an order declaring the property forfeited, the court, on application of the state, may enter any appropriate order to protect the interest of the state in the property ordered to be forfeited.

(q) In conjunction with any civil action brought pursuant to this article:

(1) The court, on application of the prosecutor, may enter any restraining order or injunction; require the execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this article, including issuing a warrant for its seizure and writ of attachment, whether before or after the filing of a complaint for forfeiture;

(2) A temporary restraining order under this Code section may be entered on application of the prosecutor, without notice or an opportunity for a hearing, if the prosecutor demonstrates that:

(A) There is probable cause to believe that the property with respect to which the order is sought, in the event of final judgment or conviction, would be subject to forfeiture under this article; and

(B) Provision of notice would jeopardize the availability of the property for forfeiture;

(3) Notice of the entry of a restraining order and an opportunity for a hearing must be afforded to persons known to have an interest in the property. The hearing must be held at the earliest possible date consistent with the date set in subsection (b) of Code Section 9-11-65 and is limited to the issues of whether:

(A) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property's being destroyed, conveyed, encumbered, removed from the jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture; and

(B) The need to preserve the availability of property through the entry of the requested order outweighs the hardship on any owner or interest holder against whom the order is to be entered;

(4) If property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause or order of forfeiture or a hearing under paragraph (2) of this subsection, the court, on an application filed by an owner of or interest holder in the property within 30 days after notice of its seizure or lien or actual knowledge of such seizure or lien, whichever is earlier, and complying with the requirements for an answer to an in rem complaint, and after five days' notice to the prosecutor of the judicial circuit where the property was seized or, in the case of a forfeiture lien, to the prosecutor filing such lien, may issue an order to show cause to the seizing law enforcement agency for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. The hearing must be held within 30 days unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, the property must be released pending the outcome of a judicial proceeding which may be filed pursuant to this Code section; and

(5) The court may order property that has been seized for forfeiture to be sold to satisfy a specified interest of any interest holder, on motion of any party, and after notice and a hearing, on the conditions that:

(A) The interest holder has filed a proper claim and:

(i) Is authorized to do business in this state and is under the jurisdiction of a governmental agency of this state or of the United States which regulates financial institutions, securities, insurance, or real estate; or

(ii) Has an interest that the prosecutor has stipulated is exempt from forfeiture;

(B) The interest holder must dispose of the property by commercially reasonable public sale and apply the proceeds first to its interest and then to its reasonable expenses incurred in connection with the sale or disposal; and

(C) The balance of the proceeds, if any, must be returned to the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this Code section.

(r) An acquittal or a dismissal or a conviction in any criminal proceeding, either by a verdict or a plea of guilty or nolo contendere, shall be admissible in evidence in any proceeding pursuant to this Code section.

(s) In hearings and determinations pursuant to this Code section:

(1) The court may receive and consider, in making any determination of probable cause or reasonable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a magistrate pursuant to Article 1 of Chapter 5 of Title 17, together with inferences therefrom; and

(2) The fact that the state has established probable cause to believe that a person has engaged in conduct giving rise to forfeiture or that the property was acquired by a person during a period of the conduct giving rise to forfeiture or within a reasonable time thereafter shall not give rise to any presumption, rebuttable or otherwise, that the property is subject to forfeiture. The state shall, at all times, have the burden to prove, by a preponderance of the evidence, that the property is subject to forfeiture under this Code section.

(t)(1) All property declared to be forfeited under this Code section vests in this state at the time of commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any property or proceeds transferred later to any person remain subject to forfeiture and thereafter must be ordered to be forfeited unless the transferee claims and establishes in a hearing under this Code section that the transferee is a bona fide purchaser for value and the transferee's interest is exempt under subsection (e) of this Code section.

(2) On entry of judgment for a person claiming an interest in the property that is subject to proceedings to forfeit property under this Code section, the court shall order that the property or interest in property be released or delivered promptly to that person free of liens and encumbrances, as provided under this article.

(3) The court is authorized to order a claimant who files a frivolous claim to pay the reasonable costs relating to the disproving of the claim which were incurred by the state, including costs for investigation, prosecution, and attorney's fees.

(u)(1) The court may, after judgment of forfeiture, make any of the following orders for disposition of the property:

(A) Judicial sale of the property;

(B) Retention of the property by any party having a property interest therein, as such interest is described in subsection (e) of this Code section, upon payment or approval of a plan for payment into court of the value of any forfeited interest in the property. The plan may include, in the case of a party having such a property interest who holds a lien on or security interest in the property, the sale of the property by any such party under such terms and conditions as may be prescribed by the court and the payment into court of any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest; or

(C) Destruction of any contraband, the possession of which is illegal.

(2) The proceeds from any judicial sale or payments from a party having a property interest as described in paragraph (1) of this subsection shall be delivered to the Department of Community Health. The proceeds shall then be disbursed in accordance with the requirements of federal law.

(v) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under this article, provided that no property shall be forfeited after an acquittal or dismissal in a criminal proceeding unless the state obtains a civil judgment for forfeiture under this article.

(w) For good cause shown, the court may stay civil forfeiture proceedings during the criminal trial resulting from a related indictment or information alleging a violation of this article.

(x)(1) The court shall order the forfeiture of any property of a claimant or defendant up to the value of property found by the court to be subject to forfeiture under the provisions of this Code section if any of the forfeited property:

- (A) Cannot be located;
- (B) Has been transferred or conveyed to, sold to, or deposited with a third party;
- (C) Is beyond the jurisdiction of the court;
- (D) Has been substantially diminished in value while not in the actual physical custody of the receiver or governmental agency directed to maintain custody of the property; or
- (E) Has been commingled with other property that cannot be divided without difficulty.

(2) In addition to any other remedy provided for by law, a prosecutor on behalf of the state may institute an action in any court of this state or of the United States or any of the several states against any person acting with knowledge or any person to whom notice of a lien for forfeiture of property has been provided in accordance with subsection (j) of this Code section; to whom notice of seizure has been provided in accordance with subsection (i) of this Code section; or to whom notice of a civil proceeding alleging conduct giving rise to forfeiture under this Code section has been provided, if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a forfeiture lien notice or notice of seizure or after the filing and notice of a civil proceeding alleging conduct giving rise to forfeiture under this Code section, as the case may be. The state may recover judgment in an amount equal to the value of the lien but not to exceed the fair market value of the property or, if there is no lien, in an amount not to exceed the fair market value of the property, together with reasonable investigative expenses and attorney's fees. If a civil proceeding is pending, the action must be heard by the court in which the civil proceeding is pending.

(3) A prosecutor may file and prosecute in any of the courts of this state or of the United States or of any of the several states such civil actions as may be necessary to enforce any judgment rendered pursuant to this Code section.

(4) No person claiming an interest in property subject to forfeiture under this article may commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this Code section. Except as specifically authorized by this Code section, no person claiming an interest in such property may file any counterclaim or cross-claim to any action brought pursuant to this Code section.

(5) A civil action under this article must be commenced within five years after the last conduct giving rise to forfeiture or to the claim for

relief became known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(y) In the event the state fails to prove that the property is subject to forfeiture under this Code section, the property may still be subject to lien, levy, and other processes in order to satisfy any judgment which orders the payment of restitution based upon a conviction or judgment of Medicaid fraud.

(z) This Code section must be liberally construed to effectuate its remedial purposes. (Code 1981, § 49-4-146.3, enacted by Ga. L. 1997, p. 1596, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 2; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1225, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 362, § 36.)

Editor's notes. — Ga. L. 1997, p. 1596, § 1.1, not codified by the General Assembly, provides: "Sections 2 and 3 of this Act shall be known and may be cited as the 'Medicaid Fraud Forfeiture Act of 1997.'"

Ga. L. 1997, p. 1596, § 2, effective May 5, 1997, not codified by the General Assembly, provides: "The General Assembly finds that substantial financial losses to the state are being caused by acts of fraud directed at the Department of Medical Assistance and that there is a need to enhance the ability of the state to recover property and proceeds obtained through Medicaid fraud. It is the intent of this legislation to provide a legal mechanism for the seizure and forfeiture to the state

of property and proceeds obtained through acts of fraud committed to obtain medical assistance benefits or payments under Article 7 of Chapter 4 of Title 49."

Ga. L. 2000, p. 1225, § 8, not codified by the General Assembly, provides that the amendment to this Code section is applicable to civil actions filed on or after July 1, 2000.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 276 (1997).

49-4-147. Enforcement of liens, claims, or offsets against assistance.

Medical assistance payable by virtue of this article shall be subject to any claim, lien, or offset of this state against the payee and to any claim of the United States of America made against the payee pursuant to a federal statute, but such moneys shall not otherwise be subject to execution, levy, garnishment, or any other legal process; and no transfer or assignment of such at law or in equity shall be enforceable against the State of Georgia, the Department of Community Health, or the commissioner of community health; but medical assistance moneys, having been paid, are subject to all such actions and process. (Ga. L. 1977, p. 384, § 8; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

Counterclaim in aid recipient's underlying tort suit not required to enforce lien. — When the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient's settlement proceeds to recover Medicaid sums that it expended to pay providers for the recipient's medical treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that DCH's lien was invalid, the trial court properly granted the summary judgment motion of the defendant, the Commissioner of the DCH, as, contrary to the recipient's contention, the DCH was not required under O.C.G.A. § 49-4-147 or otherwise to file a counterclaim in the recipient's underlying tort suit in order to preserve its right to assert a lien under

O.C.G.A. § 49-4-149(a) given that: (1) pursuant to 42 U.S.C. § 1396p(a)(1), no counterclaim was authorized against the recipient to recover for the medical assistance, but the lien against the money recovered from the third party was expressly authorized by O.C.G.A. § 49-4-149(a); and (2) the recipient was deemed under O.C.G.A. § 49-4-149(d) to have assigned to the DCH the recipient's rights of recovery against the third party that was liable for the recipient's injuries, such that the recipient was in no position to challenge the DCH's right to collect on that assignment from the settlement which the recipient received. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

49-4-147.1. Claims by department against estate of Medicaid recipients.

(a) In accordance with applicable federal law and regulations, including those under Title XIX of the federal Social Security Act, the department may make claim against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf by the department. A claim shall be made against the estate of a deceased Medicaid recipient only if at the time of application for medical assistance the applicant received written notice that the medical assistance costs could be recovered from the applicant's estate and the applicant signed a written acknowledgment of receipt of such notice, the estate is otherwise subject to recovery, and if no hardship or other exemption exists. The commissioner shall waive such claim if he or she determines enforcement of the claim would result in substantial and unreasonable hardship to dependents of the individual against whose estate the claim exists.

(b) The estate recovery program established pursuant to this Code section shall not be effective any earlier than May 3, 2006. In no event shall the department make claims against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf prior to May 3, 2006.

(c) The commissioner shall delay execution of a claim against the estate where the dependents or heirs agree to pay the full amount of the claim in reasonable installments. (Ga. L. 1981, p. 917, § 1; Ga. L. 2006, p. 775, § 3/SB 572.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “federal Social Security Act” was substituted for “Social Security Amendments of 1965”.

Pursuant to Code Section 28-9-5, in 2006, “and” was inserted near the end of the second sentence of now subsection (a), and “May 3, 2006” was substituted for “the effective date of this subsection” in two places in subsection (b).

U.S. Code. — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

Administrative rules and regulations. — Estate recovery, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-8.

JUDICIAL DECISIONS

Recovery of Medicaid payments. — Seeking to avoid the recovery of Medicaid payments from their mother’s estate, when the daughters opted their mother out of Medicaid and planned to sell some of the mother’s property, those decisions were properly held to not be in the mother’s best interest and supported the appointment of the county conservator in that capacity. *Cruver v. Mitchell*, 289 Ga. App. 145, 656 S.E.2d 269 (2008).

Georgia Department of Community Health (DCH) erred by deeming recovery from a Medicaid claimant’s estate appropriate under O.C.G.A. § 49-4-147.1(a) since the claimant was still alive. But nothing in O.C.G.A. § 50-13-19(h) authorized the trial court to bar DCH from ever pursuing the claimant’s estate to recover Medicaid payments. *Ga. Dep’t of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 33 et seq.

C.J.S. — 81 C.J.S., Social Security, § 137.

49-4-147.2. Noneligibility of Department of Community Health to obtain nor be liable for interest on orders, judgments, and liquidated or unliquidated amounts; exemptions.

(a) Notwithstanding the provisions of Code Section 49-4-141, as used in this Code section the term “department” means the Department of Community Health or its officers, agents, or employees solely in their capacity as such officers, agents, or employees.

(b) Notwithstanding the provisions of Code Section 7-4-12, 7-4-15, 7-4-16, or 13-6-13, or any other statute or judicial construction thereof authorizing interest, the department shall not be eligible to obtain nor be liable for interest on orders, judgments, liquidated amounts, or unliquidated amounts unless such interest is:

- (1) Required by federal law or regulations;
- (2) Interest on penalties as required by Code Section 49-4-146.1;
- (3) Interest as required by Code Section 49-4-148; or

(4) Incurred by a failure to pay the penalty which may be transferred to the Indigent Care Trust Fund under Code Section

31-8-153.1 within 30 days after the penalty is imposed, in which event interest shall be paid from the thirty-first day following such imposition at the same rate as interest on penalties under Code Section 49-4-146.1. (Code 1981, § 49-4-147.2, enacted by Ga. L. 1990, p. 161, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 7.)

49-4-148. Recovery of assistance from third party liable for sickness, injury, disease, or disability; compromise or waiver of claim; compliance; effective date.

(a) Should medical assistance be paid in behalf of a recipient of medical assistance on account of any sickness, injury, disease, or disability for which another person is legally liable, the Department of Community Health may seek reimbursement for such medical assistance from such other person. The department shall be subrogated, but only to the extent of the reasonable value of the medical assistance paid and attributable to such sickness, injury, disease, or disability, to the rights of the recipient of medical assistance against the person so legally liable; the commissioner of community health may compromise, settle, and execute a release of any such claim or waive, expressly, any such claim, in whole or in part, for the convenience of the Department of Community Health. This Code section is cumulative of the remedies of the Department of Community Health which specifically include, but are not limited to, the use of hospital liens as provided in Code Sections 44-14-470 through 44-14-477; and further, the payment of medical assistance to a hospital provider shall in no way be construed to discharge the obligation of a third party to satisfy a hospital lien.

(b) All insurers, as defined in Code Section 33-24-57.1, including but not limited to group health plans as defined in Section 607(1) of the federal Employee Retirement Security Act of 1974, managed care entities as defined in Code Section 33-20A-3, which offer health benefit plans, as defined in Code Section 33-24-59.5, pharmacy benefit managers, as defined in Code Section 26-4-110.1, and any other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall comply with this subsection. Such entities set forth in this subsection shall:

(1) Cooperate with the department in determining whether a person who is a recipient of medical assistance may be covered under that entity's health benefit plan and eligible to receive benefits thereunder for the medical services for which that medical assistance was provided and respond to any inquiry from the state regarding a claim for payment for any health care item or service submitted not later than three years after such item or service was provided;

(2) Accept the department's authorization for the provision of medical services on behalf of a recipient of medical assistance as the entity's authorization for the provision of those services;

(3) Comply with the requirements of Code Section 33-24-59.5, regarding the timely payment of claims submitted by the department for medical services provided to a recipient of medical assistance and covered by the health benefit plan, subject to the payment to the department of interest as provided in that Code section for failure to comply;

(4) Provide the department, on a quarterly basis, eligibility and claims payment data regarding applicants for medical assistance or recipients for medical assistance;

(5) Accept the assignment to the department or a recipient of medical assistance or any other entity of any rights to any payments for such medical care from a third party; and

(6) Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, type or format of the claim, or a failure to present proper documentation at the point-of-sale which is the basis of the claim, if:

(A) The claim is submitted to the department within three years from when the item or service was furnished; and

(B) Any action by the department to enforce its rights with respect to such claim commenced within six years of the department's submission of the claim.

The requirements of paragraphs (2) and (3) of this subsection shall only apply to a health benefit plan which is issued, issued for delivery, delivered, or renewed on or after April 28, 2001. (Ga. L. 1977, p. 384, § 9; Ga. L. 1978, p. 1520, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 8; Ga. L. 2007, p. 348, § 1/HB 505.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “April 28, 2001” was substituted for “this subsection first becomes effective in 2001” at the end of the undesignated paragraph in subsection (b).

RESEARCH REFERENCES

ALR. — Collateral source rule — Aid or gratuity, 77 ALR3d 366. Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care, 49 ALR5th 685.

49-4-149. Lien of Department of Community Health against third parties; subrogation to recipients' insurance claims; assignment of recipients' claims.

(a) The Department of Community Health shall have a lien for the charges for medical care and treatment provided a medical assistance recipient upon any moneys or other property accruing to the recipient to whom such care was furnished or to his legal representatives as a result

of sickness, injury, disease, disability, or death, due to the liability of a third party, which necessitated the medical care.

(b) The department may perfect and enforce any lien arising under subsection (a) of this Code section by following the procedures set forth for hospital liens in Code Sections 44-14-470 through 44-14-473; except that the department shall have one year from the date the last item of medical care was furnished to file its verified lien statement; and the statement shall be filed with the appropriate clerk of court in the county wherein the recipient resides and in Fulton County. The verified lien statement shall contain the following: the name and address of the person to whom medical care was furnished; the date of injury; the name and address of the provider or providers furnishing medical care; the dates of services; the amount claimed to be due for the care; and, to the best of the department's knowledge, the names and addresses of all persons, firms, or corporations claimed to be liable for damages arising from the injuries. This Code section shall not affect the priority of any attorney's lien.

(c) The department shall be subrogated, but only to the extent of the reasonable value of the medical assistance paid and attributable to any sickness, injury, disease, or disability, to the rights of medical assistance recipients to any benefits provided such recipients by virtue of private health care insurance contracts; provided, however, the right of subrogation does not attach to any recipient's rights to benefits paid or provided under private health care coverage prior to the receipt of written notice, by the carrier who issued the health care contract, of the exercise by the department of its subrogation rights.

(d) A recipient of medical assistance who receives medical care for which the department may be obligated to pay shall be deemed to have made assignment to the department of any rights of such person to any payments for such medical care from a third party, up to the amount of medical assistance actually paid by the department; provided, however, assignment does not attach to a recipient's right to any payments provided under private health care coverage prior to the receipt of written notice, by the carrier who issued the health care coverage, of the exercise by the department of its assignment. This subsection shall apply to a recipient only if notice of this subsection is given to the recipient at the time his application for medical assistance is filed. The assignment created by this subsection shall be effective until the recipient of medical assistance is no longer an eligible recipient for medical assistance. (Ga. L. 1978, p. 1520, § 2; Ga. L. 1979, p. 1293, § 2; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

“Complete compensation rule” only applies to the subrogation rights of an insurance carrier who has received compensation from an injured party and the rule does not apply to Medicaid liens; thus, when the Georgia Department of Community Health (DCH) had a departmental lien pursuant to O.C.G.A. § 49-4-149(a) against plaintiff recipient’s settlement proceeds to recover Medicaid sums that the department expended to pay providers for the recipient’s treatment, the DCH’s lien was not precluded despite the recipient’s claim that the recipient had not received full and complete compensation for the recipient’s injuries. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Department did not take steps to recover funds. — Summary judgment denying the claim of the Department of Medical Assistance (now Department of Community Health) was appropriate when the one-year statute of limitation for recovery on the lien had expired and there was no other viable cause of action made out by the department, when the only claim which the department could make to the money received by a recipient of medical care under the Medicaid program from the tortfeasors was that provided by the lien in O.C.G.A. § 49-4-149, and since the department took no steps to recover the funds as reimbursement from the tortfeasors. *Department of Medical Assistance v. Hallman*, 203 Ga. App. 615, 417 S.E.2d 218 (1992).

Lien valid against public agency as third party. — When the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient’s settlement proceeds to recover Medicaid sums that the department expended to pay providers for the recipient’s treatment, and the recipient filed a declaratory judgment suit seeking a declaration that DCH’s lien was invalid, the trial court properly granted the summary judgment motion of defendant, the Commissioner of the DCH, as, contrary to the recipient’s contentions, the DCH’s lien under O.C.G.A. § 49-4-149(a) was not invalid even though the DCH was seeking to

enforce the lien against another public agency (the board of regents of Georgia’s university system, doing business as a medical college) because § 49-4-149(a) allowed the lien against moneys owed by a third party for its liability leading to the recipient’s injury and, applying the definitions in O.C.G.A. § 49-4-141(4) and (9), third parties included other public agencies. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Payment of attorney’s fees. — When the Georgia Department of Community Health (DCH) filed a departmental lien pursuant to O.C.G.A. § 49-4-149(a) against plaintiff recipient’s settlement proceeds to recover Medicaid sums that it expended to pay providers for the recipient’s treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that the DCH’s lien was invalid, the lien was properly found to be valid and, since the settlement proceeds were sufficient to cover both the DCH’s lien and the sum of 40 percent of the settlement proceeds which the recipient had agreed to pay the recipient’s attorney as a fee, the DCH was not obligated to reduce DCH’s lien to take into account the recipient’s payment of attorney fees; such reductions only became an issue where the recipient’s recovery was inadequate to cover both the DCH’s lien and the attorney’s lien, in which case lien priority would have been an issue, but it was not an issue in the recipient’s case and so, like any other litigant, the recipient was obliged to bear the cost of the recipient’s own attorney fees. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Priority of attorney’s lien. — Liens established by O.C.G.A. §§ 49-4-149 and 44-14-470 are subject to attorney’s lien. *Holland v. State Farm Mut. Auto. Ins. Co.*, 236 Ga. App. 832, 513 S.E.2d 48 (1999).

Lien applies to all funds recovered in tort claim. — Georgia Department of Community Health (DCH) lien for Medicaid payments made on behalf of recipients applied to all money recovered in the recipients’ tort claims, not just the recovery denominated as the medical expense recovery, and DCH was not required to

pay any part of the costs of collecting the reimbursement. Richards v. Ga. Dep't of Cmt'y. Health, 278 Ga. 757, 604 S.E.2d 815 (2004).

RESEARCH REFERENCES

ALR. — Collateral source rule — Aid or gratuity, 77 ALR3d 366.

49-4-149.1. Submission by department of plan for family supplementation of Medicaid payments upon federal removal of restrictions.

If the federal government removes restrictions upon family supplementation of Medicaid payments or approves a waiver allowing this supplementation, the Department of Community Health shall submit to the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House of Representatives a plan for this supplementation, which submission shall be made within 30 days after the earlier of the date the restrictions are removed or the date the waiver is approved. (Ga. L. 1982, p. 824, § 1; Code 1981, § 49-4-149.1, enacted by Ga. L. 1982, p. 824, § 2; Ga. L. 1992, p. 6, § 49; Ga. L. 1999, p. 296, § 24; Ga. L. 2005, p. 48, § 5/HB 309.)

49-4-150. Regulations as to maintenance and use of records; certificate as to use of information.

The Board of Community Health is directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Department of Community Health relating to applicants for and recipients of medical assistance. Except as otherwise provided in Code Section 49-4-151, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of medical assistance to purposes directly connected with the administration of the state plan. No person who obtains information by virtue of any such regulations shall use such information for commercial or political purposes, and any person seeking such information shall certify to the commissioner of community health, in writing, that the information obtained will not be used for commercial or political purposes. (Ga. L. 1977, p. 384, § 10; Ga. L. 1999, p. 296, § 24.)

49-4-151. Obtaining information for investigations and audits.

(a) The commissioner, for the purposes of investigating the nature, amount, and extent of services provided to a recipient of medical assistance or auditing information submitted to the department concerning a provider's entitlement to an amount of medical assistance, is

authorized, personally or by his duly authorized representative, to administer oaths and to examine and copy books, papers, records (medical, business, or otherwise), or memoranda of a provider or of any other person possessed of information relating to reimbursable costs claimed by a provider or otherwise relating to the amount of medical assistance to which a provider is entitled. The commissioner may compel such examinations by means of subpoenas issued to require the custodian of such items to produce them for examination. A subpoena may be served by any sheriff, by his deputy, or by any other person not less than 18 years of age. Proof may be shown by return of certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery, and the return receipt shall constitute prima-facie proof of service. If any person shall fail to obey a subpoena issued and served under this subsection, then upon application of the commissioner, the superior court of the county in which such custodian was required to appear may issue an order requiring such custodian to comply with the subpoena and to produce the subpoenaed documentation. Furthermore, if any provider shall fail to obey a subpoena issued and served under this subsection with respect to any matter concerning a claim for medical assistance, that claim for medical assistance shall not be reimbursed by the Department of Community Health; and, if already reimbursed, the amount of medical assistance reimbursed shall be deducted from any amount of medical assistance which may then be or thereafter become payable to such provider.

(b) In the course of conducting investigations and audits, the Department of Community Health may request from any governmental department, board, commission, bureau, or agency information and assistance pertinent thereto. The Department of Community Health shall be entitled to have access to all such pertinent information which is within the custody of any governmental department, board, commission, bureau, or agency. (Ga. L. 1977, p. 384, § 10; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1589, § 3.)

49-4-152. Research and demonstration projects; pilot projects to provide health care coverage and essential health care services; pharmacy assistance programs.

Subject to the availability of funds, the Department of Community Health is authorized to enter into agreements with and submit applications to departments and agencies of the government of the United States for purposes of accepting grants, receiving matching funds, and administering such grants and funds for research and demonstration projects pursuant to Title XI, XVIII, XIX, or XXI of the federal Social Security Act of 1935, as amended, or any other provision of federal law,

without regard to the factor of state wideness and such other factors as may be required to be waived by the terms of the federal grant. Notwithstanding any other provision of law and subject to the availability of funds, the department is authorized to establish pilot projects to provide health care coverage and access to essential health care services or benefits to the uninsured and underinsured, including but not limited to pharmacy assistance programs. (Ga. L. 1977, p. 384, § 11; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a hyphen between “state” and “wideness” was deleted in the first sentence.

Pursuant to Code Section 28-9-5, in 2001, “Title” was substituted for “Titles” in the first sentence of this Code section.

U.S. Code. — Titles XI, XVIII, XIX, and XXI of the federal Social Security Act of 1935, referred to in this Code section, are codified at 42 U.S.C. §§ 1320d et seq., 42 U.S.C. § 1395, 42 U.S.C. § 1396 (XIX and XXI), respectively.

49-4-152.1. Medicaid Prescription Drug Bidding and Rebate Program.

(a) The General Assembly finds that the department frequently must pay more for prescription drugs furnished to recipients of medical assistance under this article than certain health care providers pay for the same products. In order to control more effectively the costs of such drugs, the department may establish a Medicaid Prescription Drug Bidding and Rebate Program as provided in this Code section.

(b) The department may request sealed bids from prescription drug manufacturers for both brand name and generic equivalent prescription drugs specified by the department. The bids shall be proposed agreements by these manufacturers to adjust prices of drugs specified by the department to a price designated as the bid price when those drugs are supplied to recipients of medical assistance under this article. If the department has accepted a bid for a drug under this Code section, the department may not reimburse a provider of such drug for any equivalent drug not so successfully bid during the term of the contract awarded with regard to the drug so bid. The department may elect not to reimburse for any multisource drugs of a drug manufacturer which does not participate in the bid process or which bids prices considered excessive by the department.

(c) All prescription drugs for which bids are submitted must meet applicable standards of the U.S. Pharmacopoeia, the State Board of Pharmacy, and be guaranteed as meeting all requirements, regulations, and comparison data under the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. The manufacturer of a drug which is bid must have an FDA approved New Drug Application or an abbreviated New Drug Application and must have a product liability insurance

policy extending to pharmacy providers under this article, but the policy may condition coverage thereunder upon the provider's complying with all applicable federal and state laws and regulations promulgated thereunder.

(d) Nothing in this Code section shall be construed to change the practice of pharmacies having provider agreements under this article with respect to their purchases and sales of and reimbursements for drugs furnished to recipients of medical assistance under this article. Adjustment rebates shall be made by the successfully bidding drug manufacturer to the department and be paid quarterly to the department.

(e) In the event no acceptable bids are received for a drug for which a request for bid was made, the department may select a single drug supplier for the drug or establish one price for such drug which the department will reimburse therefor, but this shall not restrict the department from establishing one price for any drug upon which the department does not request bids.

(f) Except when in conflict with this Code section, Article 3 of Chapter 5 of Title 50, relating to state purchases by the Department of Administrative Services, shall apply to bidding and purchasing of prescription drugs by the department pursuant to this Code section. The prohibitions against financial interest in Code Section 50-5-78 shall be applicable to the commissioner and other employees of the department and any violation thereof punishable as provided in subsection (d) of that Code section. Contracts for the purchase of prescription drugs made in violation of this Code section shall be void and of no effect and liability therefor shall be the same as that provided in Code Section 50-5-79.

(g) The department is authorized to accept rebates from any drug manufacturer for providing information to that manufacturer regarding utilization by Medicaid recipients of that manufacturer's drugs as long as the anonymity of the recipients is maintained. The department is further authorized to verify and audit claims for reimbursement for drugs successfully bid, provide the manufacturers thereof with the information so obtained, and to adjust the department's claim for rebates based upon that information.

(h) The provisions of this Code section shall be construed in conformity with Code Section 49-4-157. (Code 1981, § 49-4-152.1, enacted by Ga. L. 1989, p. 852, § 1.)

U.S. Code. — The Federal Food, Drug, and Cosmetic Act, referred to in subsection (c) of this Code section, is codified at 21 U.S.C. § 301 et seq.

49-4-152.2. Rebates for sole-source and multiple-source drugs included in Controlled Medical Assistance Drug List.

(a) The department is authorized to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under the state plan for eligible recipients under this article. Such agreements shall provide for a periodic rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product covered under the state plan.

(b) Prescription drug products shall be included in the Controlled Medical Assistance Drug List only upon satisfaction and completion of the application and approval process established by the department. Those products for which a rebate has been successfully negotiated shall automatically be included in the Controlled Medical Assistance Drug List for a period of time conterminous with the negotiated rebate.

(c) If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer or distributor of that product shall disclose to the department its most favorable pricing arrangements available to state and nonstate government purchasers of such products. If the department determines that the product needs to be included in the Controlled Medical Assistance Drug List, the department shall establish the amount of the rebate for such product based upon the price information provided by the manufacturer or distributor. The determination as to whether a product should be included in the Controlled Medical Assistance Drug List shall be based upon the product's efficacy, cost, medical necessity, and safety.

(d) The provisions of this Code section shall be construed in conformity with Code Section 49-4-157. (Code 1981, § 49-4-152.2, enacted by Ga. L. 1990, p. 1808, § 2; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the last sentence of subsection (b).

49-4-152.3. Reuse of unit dosage drugs.

(a) As used in this Code section, the term:

(1) "Long-term care facility" or "facility" means an intermediate care home, skilled nursing home, or intermingled home subject to regulation as such by the Department of Community Health.

(2) "Unit dosage drug" means any dangerous drug regulated under Chapter 13 of Title 16 which is individually packaged to contain only

one dosage of such drug and which includes on such packaging the brand or generic name, strength, lot number, and expiration date of such drug.

(b) Unit dosage drugs may be returned to the dispensing pharmacy for reuse. The department and the State Board of Pharmacy shall promulgate regulations which permit the reuse of prescribed but unused unit dosage drugs for a resident of a long-term care facility other than the resident for whom the drug was originally prescribed, but only when:

(1) The cost of those drugs has been paid for or reimbursed under this article; and

(2) The drugs are unused because the resident for whom the drugs were originally prescribed:

(A) Has died;

(B) Has had such resident's prescription changed so as no longer to require those drugs; or

(C) Otherwise no longer needs those drugs.

The consent of the resident for whom the unused drugs were originally prescribed shall not be required for such reuse of prescribed unit doses. Such reuse shall only be authorized by a resident of a long-term care facility for whom the specific dosage of that unused drug has been prescribed when payment or reimbursement for that drug for that resident is otherwise permitted under this article. Nothing in this Code section shall require a pharmaceutical manufacturer to provide a rebate based on the reuse of any unused unit dosage drug. (Code 1981, § 49-4-152.3, enacted by Ga. L. 1997, p. 939, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

49-4-152.4. Department contracts to require refund of prescription drug rebates.

The department shall provide that any department contract with a provider of medical assistance which is renewed or executed on or after July 1, 1997, shall require a refund to the department of any prescription drug rebate, as established in this article or in federal law in Section 1927 of Title XIX of the Social Security Act, as amended, obtained by the provider for prescription drugs furnished to recipients of medical assistance pursuant to that contract. (Code 1981, § 49-4-152.4, enacted by Ga. L. 1997, p. 1385, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 49-4-152.3, was redesignated as Code Section 49-4-152.4.

U.S. Code. — Section 1927 of Title XIX

of the Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396r-8.

49-4-152.5. Restocking fees.

In the provision of medical assistance pursuant to this article, the department shall allow for the payment and coverage of appropriate restocking fees incurred by a pharmacy which receives and dispenses prescription drugs pursuant to Article 11 of Chapter 4 of Title 26, the "Utilization of Unused Prescription Drugs Act." (Code 1981, § 49-4-152.5, enacted by Ga. L. 2006, p. 152, § 2/HB 1178; Ga. L. 2009, p. 8, § 49/SB 46.)

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 197 (2006).

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.

(a) The Board of Community Health is authorized to establish regulations regarding the manner in which the appeals set forth in subsection (b) of this Code section shall be conducted.

(b)(1) Any applicant for medical assistance whose application is denied or is not acted upon with reasonable promptness and any recipient of medical assistance aggrieved by the action or inaction of the Department of Community Health as to any medical or remedial care or service which such recipient alleges should be reimbursed under the terms of the state plan which was in effect on the date on which such care or service was rendered or is sought to be rendered shall be entitled to a hearing upon his or her request for such in writing and in accordance with the applicable rules and regulations of the department and the Office of State Administrative Hearings. As a result of the written request for hearing, a written recommendation shall be rendered in writing by the administrative law judge assigned to hear the matter. Should a decision be adverse to a party and should a party desire to appeal that decision, the party must file a request in writing to the commissioner or the commissioner's designated representative within 30 days of his or her receipt of the hearing decision. The commissioner, or the commissioner's designated representative, has 30 days from the receipt of the request for appeal to affirm, modify, or reverse the decision appealed from. A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, sepa-

rately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each agency shall maintain a properly indexed file of all decisions in contested cases, which file shall be open for public inspection except those expressly made confidential or privileged by statute. If the commissioner fails to issue a decision, the initial recommended decision shall become the final administrative decision of the commissioner.

(2)(A) A provider of medical assistance may request a hearing on a decision of the Department of Community Health with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of the provider's request for hearing to the Office of State Administrative Hearings. The provider's request for hearing shall identify the issues under appeal and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the Department of Community Health which is the basis for the appeal.

(B) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(C) A request for hearing by a nursing home provider shall stay any recovery or recoupment action.

(D) Should the decision of the administrative law judge be adverse to a party and should a party desire to appeal that decision, the party must file a request therefor, in writing, with the commissioner within ten days of his or her receipt of the hearing decision. Such a request must enumerate all factual and legal errors alleged

by the party. The commissioner, or the commissioner's designated representative, may affirm, modify, or reverse the decision appealed from.

(3) A person or institution who either has been refused enrollment as a provider in the state plan or has been terminated as a provider by the Department of Community Health shall be entitled to a hearing; provided, however, that no entitlement to a hearing before the department shall lie for refusals or terminations based on the want of any license, permit, certificate, approval, registration, charter, or other form of permission issued by an entity other than the Department of Community Health, which form of permission is required by law either to render care or to receive medical assistance in which federal financial participation is available. The final determination (subject to judicial review, if any) of such an entity denying issuance of such a form of permission shall be binding on and unreviewable by the Department of Community Health. In cases where an entitlement to a hearing before the Department of Community Health, pursuant to this paragraph, lies, the Department of Community Health shall give written notice of either the denial of enrollment or termination from enrollment to the affected person or institution; and such notice shall include the reasons of the Department of Community Health for denial or termination. Should such a person or institution desire to contest the initial decision of the Department of Community Health, he or she must give written notice of his or her appeal to the commissioner of community health within ten days after the date on which the notice of denial or notice of termination was transmitted to him or her. A hearing shall be scheduled and commenced within 20 days after the date on which the commissioner receives the notice of appeal; and the commissioner or his or her designee or designees shall render a final administrative decision as soon as practicable thereafter.

(c) If any aggrieved party exhausts all the administrative remedies provided in this Code section, judicial review of the final decision of the commissioner may be obtained by filing a petition within 30 days after the service of the final decision of the commissioner or, if a rehearing is requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. Copies of the petition shall be served upon the commissioner and all parties of record. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision, and any grounds upon which the petitioner contends that the decision

should be reversed or modified. Judicial review of the commissioner's decision may be obtained in the same manner and under the same standards as are applicable to those contested cases which are reviewable pursuant to Code Section 50-13-19; provided, however, that no other provision of Chapter 13 of Title 50 shall be applicable to the department with the exception of Code Sections 50-13-13 and 50-13-15. Notwithstanding any other provision of law, a stay of the commissioner's final decision may be granted by a reviewing court to a provider of medical assistance only on condition that such provider posts bond with the commissioner in favor of the state, with good and sufficient surety thereon by a surety company licensed to do business in this state, in an amount determined by the commissioner to be sufficient to recompense the state for all medical assistance which otherwise would not be paid to the provider but for the granting of such a stay. A stay may be granted and renewed for time intervals up to three months, so long as bond is posted for every interval of time in which the stay is in effect.

(d) All contested cases involving the imposition of a remedial or punitive measure against a nursing facility by the Department of Community Health shall be conducted in the manner provided for in subsection (l) of Code Section 31-2-8, but only if such remedial or punitive measure is based upon findings made by the Department of Community Health in its capacity as the state survey agency for the Georgia Medicaid program.

(e)(1) A dentist acting pursuant to subsection (b) of Code Section 33-21A-8 or a provider of medical assistance may request a hearing on a decision of a care management organization with respect to the provisions set forth in subsection (b) of Code Section 33-21A-8 or with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of the provider's request for hearing to the Office of State Administrative Hearings but shall not be a party to the proceedings. The provider's request for hearing shall identify the care management organization with which the provider has a dispute, the issues under appeal, and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the care management organization which is the basis for the appeal. Notwithstanding any other provision of this title, an administrative law judge appointed pursuant to paragraph (2) of this subsection shall be authorized to allow a provider of medical assistance to

consolidate pending complaints or claims against a care management organization that are based on the same or similar payment or coverage issues, as determined by such administrative law judge. Such consolidation shall include disposition of the same or similar claims through a single hearing that adjudicates the total amount of such consolidated claims.

(2) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(3) The decision of the administrative law judge shall be the final administrative remedy available to the provider. Review thereafter shall proceed in accordance with Code Section 50-13-19. The fees and expenses of the Office of State Administrative Hearings may, at the administrative law judge's discretion, be assessed against the party against whom the administrative law judge enters his or her order. (Ga. L. 1977, p. 384, § 12; Ga. L. 1988, p. 288, § 1; Ga. L. 1993, p. 1290, § 3; Ga. L. 1994, p. 1856, § 2; Ga. L. 1997, p. 679, § 2; Ga. L. 1998, p. 576, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2006, p. 775, §§ 4, 5/SB 572; Ga. L. 2008, p. 704, § 2/HB 1234; Ga. L. 2009, p. 453, § 1-53/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" in the middle of subsection (d).

Law reviews. — For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

Editor's notes. — Ga. L. 1994, p. 1856, § 5, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1994, for purposes of commencing transfer of positions, independent hearing officers, employees, and equipment and for general administrative purposes. The

Office of State Administrative Hearings may commence the performance of its duties on and after July 1, 1994, and shall assume full responsibility for the performance of its duties on and after April 1, 1995. The Office of State Administrative Hearings shall, where necessary for any class of hearings, promulgate rules and regulations in order to comply with all federal and state procedural requirements. During the period between July 1, 1994, and April 1, 1995, covered agencies may continue to conduct covered administrative hearings as provided by prior law; but on and after April 1, 1995, all such

hearings in new and, where practical, in pending proceedings shall be conducted as provided in this Act.”

JUDICIAL DECISIONS

Service. — Based on use of the term “service” for purposes of O.C.G.A. § 49-4-153(c) with respect to timing for filing the petition for judicial review, as opposed to use of the word “receipt” when discussing timing issues under § 49-4-153(b)(2)(D) and (b)(1), the timing provision in § 49-4-153(c) has been construed to require that a petition for judicial review was to be filed within 30 days after the date on which the final decision was mailed by the Commissioner for the Department of Family and Children Services. *Gladowski v. Dep’t of Family & Children Servs.*, 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Agency interpretation not entitled to judicial deference. — Decision of the department of community health (DCH) interpreting the phrase “last approved cost report” as used in the DCH’s policies and procedures manual for purposes of computing an owner’s reimbursement rate was not entitled to judicial deference because the phrase was not used in a statute, rule, or regulation, but rather in the manual, the terms of which had not undergone the scrutiny afforded a statute during the legislative process or the adoption process. *Pruitt Corp. v. Ga. Dep’t of Cmty. Health*, 284 Ga. 158, 664 S.E.2d 223 (2008).

Exhaustion of administrative remedies. — Commissioner of the Department of Community Health, members of the board of that Department, and the Director of the Department’s Division of Medical Assistance could not avoid judicial review for want of exhaustion of administrative remedies when the very rules of the department precluded both hearing

and a remedy sought by a Medicaid-eligible woman; moreover, no adequate administrative remedy existed which the woman could have exhausted. *Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 651 S.E.2d 36 (2007).

Untimely petition. — Georgia Civil Practice Act’s three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid applicant’s claim for benefits pursuant to O.C.G.A. § 50-13-19; similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c), and, accordingly, the applicant’s petition was properly denied as untimely. *Gladowski v. Dep’t of Family & Children Servs.*, 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Applicable standard of review. — Trial court erred by failing to apply the proper standard of review to a decision of the Georgia Department of Community Health that terminated a claimant’s medical assistance under a Medicaid waiver program available to qualifying children. The appellate court directed that the standard of review set forth in O.C.G.A. § 49-4-153(c) was applicable to the case, which called for application of the substantial evidence standard set forth in the Administrative Procedure Act, O.C.G.A. § 50-13-19. *Greene v. Dep’t of Cmty. Health*, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

Cited in *Hodges v. Smith*, 910 F. Supp. 646 (N.D. Ga. 1995); *Ga. Dep’t of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

49-4-154. Powers and duties retained by Department of Human Resources (Department of Community Health).

(a) The status, position, and rights of persons transferred from the Department of Human Resources (now known as the Department of Community Health for these purposes) to the Department of Medical

Assistance pursuant to Ga. L. 1977, p. 384 shall not be affected by the transfer, in and of itself; and such persons shall retain, inter alia, all rights of rank or grade; rights to vacation, sick pay, and leave; rights under any retirement plan; and any other rights under any law or administrative policy.

(b) The Department of Human Resources (now known as the Department of Community Health for these purposes) shall retain, in accordance with terms of the state plan, the functions, and all tangible things and employees relating thereto, of:

(1) Establishing and maintaining certain standards for certain institutions and agencies seeking to become or remain providers and shall finally determine and certify whether such institutions and agencies meet such standards;

(2) Determining and certifying the eligibility of certain applicants for and recipients of medical assistance; and

(3) Prescribing regulations to require that applicants for medical assistance be given clear and easily understandable notice that all books, papers, records, and memoranda of the provider relating to the provision of medical assistance to the applicant will be made available, upon request, to the commissioner of medical assistance or his representative and that, by accepting medical assistance, the applicant thereby consents to the providing of such books, papers, records, and memoranda to the commissioner of medical assistance or his representative. (Ga. L. 1977, p. 384, § 13; Ga. L. 1994, p. 97, § 49; Ga. L. 2009, p. 453, § 1-54/HB 228.)

49-4-155. Department of Community Health to succeed to existing rules, regulations, policies, procedures, and administrative orders.

The Department of Community Health shall succeed to all the rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources (now known as the Department of Human Services) transferred to the Department of Medical Assistance pursuant to the previously existing provisions of this Code section and that are in effect on June 30, 1999, and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources (now known as the Department of Human Services) that are in effect on June 30, 1999, to which the Department of Medical Assistance succeeded pursuant to the previously existing provisions of Code Section 49-4-156. (Ga. L. 1977, p. 384, § 14; Ga. L. 1999, p. 296, § 20; Ga. L. 2009, p. 453, § 1-55/HB 228.)

49-4-156. Tax exemption for health maintenance organizations with respect to contracts pursuant to this article.

Reserved. Repealed by Ga. L. 2010, p. 125, § 1, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 49-4-156, enacted by Ga. L. 2005, p. 1438, § 3/SB 140.

49-4-156.1. Reimbursement for services rendered under Article 5 of Chapter 6 of this title.

It is the intention of the General Assembly that the Department of Community Health be authorized to take those actions necessary to provide reimbursement under this article for services rendered under Article 5 of Chapter 6 of this title, relating to community care for the elderly. (Ga. L. 1982, p. 2248, § 2; Code 1981, § 49-4-156.1, enacted by Ga. L. 1982, p. 2248, § 3; Ga. L. 1999, p. 296, § 24.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "this title" was substituted for "Title 49".

49-4-157. Construction of this article with federal act.

It is the intention of the General Assembly that this article be construed consistently with Title XIX of the federal Social Security Act of 1935, as amended, and so as to authorize the Department of Community Health, within the appropriations provided to it, to administer the state plan in a manner so as to receive the maximum amount of federal financial participation available in expenditures made under the state plan. (Ga. L. 1977, p. 384, § 16; Ga. L. 1999, p. 296, § 24.)

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

State's rules restricting reimbursement for abortions inconsistent with Social Security Act. — Rules promulgated by Georgia's Department of Medical Assistance (now Department of Community Health) restricting reimbursement to Medicaid enrollees for medically necessary abortions are inconsistent with Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and because the plaintiff classes will suffer irreparable injury for which there is no adequate legal remedy, the defendants, the defendants' agents

and employees, must be permanently enjoined from refusing to provide Medicaid reimbursement to the members of the plaintiff classes for the provision of all medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Exhaustion of administrative remedies. — Commissioner of the Department of Community Health, members of the board of that Department, and the Director of the Department's Division of Medical Assistance could not avoid judicial review for want of exhaustion of adminis-

trative remedies when the very rules of the department precluded both hearing and a remedy sought by a Medicaid-eligible woman; moreover, no

adequate administrative remedy existed which the woman could have exhausted. *Feminist Women's Health Ctr. v. Burgess*, 282 Ga. 433, 651 S.E.2d 36 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortions to assure maximum federal financial participation. — State funds may not be expended for any abortions except those in pregnancies wherein the life of the mother would be endangered if the fetus were carried to term, especially given the fact that it is the intention of the General Assembly that Ga. L. 1977, p. 384, § 1 et seq. (see O.C.G.A. § 49-4-140

et seq.) be construed so as to accomplish maximum federal financial participation. If the state plan were to be administered so as to assure payment for abortions other than those where the life of the mother would be threatened if the fetus were carried to term, no federal funds would be available for that purpose. 1977 Op. Att'y Gen. No. 77-64.

ARTICLE 7A

LONG-TERM CARE PARTNERSHIP PROGRAM

49-4-160. Short title.

This article shall be known and may be cited as the “Georgia Long-term Care Partnership Program Act.” (Code 1981, § 49-4-160, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465.)

Cross references. — Long-term care insurance, § 33-42-1 et seq.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 423.

49-4-161. Definitions.

As used in this article, the term:

(1) “Asset disregard” means, with regard to state Medicaid benefits, the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy.

(2) “Commissioner” means the Commissioner of Insurance.

(3) “Department” means the Department of Community Health.

(4) “Georgia Qualified Long-term Care Partnership Program approved policy” means a long-term care insurance policy that meets

the model regulations and requirements of the National Association of Insurance Commissioners' long-term care insurance model regulation and long-term care insurance model act as specified in 42 U.S.C. Section 1917(b) and Section 6021 of the Federal Deficit Reduction Act of 2005 and the Commissioner certifies such policy as meeting these requirements.

(5) "State Medicaid program" means the medical assistance program established in this state under Title XIX of the federal Social Security Act.

(6) "State plan amendment" means a state Medicaid plan amendment made to the federal Department of Health and Human Services that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy. (Code 1981, § 49-4-161, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 1/HB 1451; Ga. L. 2009, p. 8, § 49/SB 46.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2006, p. 72, § 49, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 185, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

49-4-162. Program established; purposes; assets to be disregarded with respect to Medicaid eligibility or payment or recovery by the state of payments for medical services.

(a) In accordance with Section 6021 of the Federal Deficit Reduction Act of 2005, there is established the Georgia Qualified Long-term Care Partnership Program which shall be administered by the Department of Community Health, with the assistance of the Commissioner and the Department of Human Services, and which shall be for the following purposes:

(1) To provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(2) To provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under the state Medicaid program without first being required to substantially exhaust their resources;

(3) To provide counseling services through the Division of Aging Services of the Department of Human Services to individuals in planning of their long-term care needs; and

(4) To alleviate the financial burden on the state's Medicaid program by encouraging the pursuit of private initiatives.

(b) Upon the exhaustion of benefits or upon the diminishment of assets below the anticipated remaining benefits under a Georgia Qualified Long-term Care Partnership Program approved policy, certain assets of an individual, as provided in subsection (c) of this Code section, shall not be considered when determining any of the following:

(1) Medicaid eligibility;

(2) The amount of any Medicaid payment; and

(3) Any subsequent recovery by the state of a payment for medical services.

(c) The department shall:

(1) Not later than November 15, 2006, make application to the federal Department of Health and Human Services for a state plan amendment to establish that the assets an individual owns and may retain under Medicaid and still qualify for benefits under Medicaid at the time the individual applies for benefits is increased dollar for dollar for each dollar paid out under the individual's long-term care insurance policy if the individual is the beneficiary of a qualified long-term care insurance partnership policy purchased through the Georgia Qualified Long-term Care Partnership Program; and

(2) Provide information and technical assistance to the Commissioner to assure that any individual who sells a qualified long-term care insurance partnership policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. (Code 1981, § 49-4-162, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 2/HB 1451; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2006, p. 72, § 49/SB 465, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 185, § 2/HB 1451. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2006, "Georgia Qualified Long-term Care Partnership Program" was substituted for "Georgia Long-term Care Partnership

Program" in subsection (a) and paragraph (c)(1), and "Not later than November 15, 2006" was substituted for "Within 180 days of the effective date of this Code section" at the beginning of paragraph (c)(1).

Pursuant to Code Section 28-9-5, in 2009, "of Insurance" was deleted following "Commissioner" in the introductory language of subsection (a).

49-4-163. Eligibility for asset disregard; reciprocal agreements with other states to extend asset disregard mutually.

(a) An individual who is a beneficiary of a Georgia Qualified Long-term Care Partnership Program approved policy is eligible for

assistance under the state Medicaid program using asset disregard pursuant to the provisions of subsection (c) of Code Section 49-4-162.

(b) If the Georgia Qualified Long-term Care Partnership Program is discontinued, an individual who purchased a Georgia Qualified Long-term Care Partnership Program approved policy prior to the date the program was discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005.

(c) The department may enter into reciprocal agreements with other states to extend the asset disregard to residents of the state who purchase long-term care policies in another state which has asset disregard provisions as established under this article as provided by Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005. (Code 1981, § 49-4-163, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 3/HB 1451.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “Georgia Qualified Long-term Care Partnership Program” was substituted for “Georgia Long-term Care Partnership Program” near the beginning of subsection (b).

49-4-164. Requirements for selling qualified long-term care insurance partnership policies; rules and regulations; reports.

(a) The Commissioner shall:

(1) Develop requirements to ensure that any individual who sells a qualified long-term care insurance partnership policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care; and

(2) Not impose any requirement affecting the terms or benefits of qualified long-term care partnership policies unless the Commissioner imposes such a requirement on all long-term care policies sold in this state without regard to whether the policy is covered under the partnership or is offered in connection with such partnership.

(b) The department and the Commissioner are authorized to promulgate rules and regulations to implement and administer the provisions of this article.

(c) The issuers of qualified long-term care partnership policies in this state shall provide regular reports to both the secretary of the United States Department of Health and Human Services in accordance with federal law and regulations and to the department and the Commissioner as provided in Section 6021 of the Federal Deficit Reduction Act

of 2005. (Code 1981, § 49-4-164, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 185, § 4/HB 1451.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “secretary of the United States” was substituted for “Secretary of the” in subsection (c).

49-4-165. Notice to consumers.

(a) A qualified long-term care insurance partnership policy shall contain a summary notice to the consumer in plain language on the current law pertaining to asset disregard and asset tests.

(b) The notice to the consumer under subsection (a) of this Code section shall be developed by the Commissioner of Insurance. (Code 1981, § 49-4-165, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 185, § 5/HB 1451.)

49-4-166. Effective date.

Repealed by Ga. L. 2006, p. 185 § 6/HB 1451, effective April 19, 2006.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the reservation of this Code section designation was deleted.

Editor’s notes. — This Code section was based on Code 1981, § 49-4-166, enacted by Ga. L. 2005, p. 823, § 1/HB 643.

ARTICLE 7B

FALSE MEDICAID CLAIMS

Editor’s notes. — Ga. L. 2007, p. 355, § 1/HB 551, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘State False Medicaid Claims Act.’”

Ga. L. 2007, p. 355, § 2/HB 551, not codified by the General Assembly, provides: “The General Assembly recognizes that the submission of false or fraudulent claims to the Georgia Medicaid program can and does cause the state treasury to incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is intended to provide a partial remedy for this problem by providing specific procedures whereby this state, and private citizens acting for and on behalf of this state, may bring civil actions against persons and entities who

have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under this article, ‘whistle blowers’ are encouraged to come forward when they have information about the submission of false claims to the Georgia Medicaid program, and rewarded when their initiative results in civil recoveries for this state.”

49-4-168. Definitions.

As used in this article, the term:

(1) “Claim” includes any request or demand, whether under a contract or otherwise, for money or property, whether or not the Georgia Medicaid program or this state has title to such money or property, which is made to the Georgia Medicaid program, to any officer, employee, fiscal intermediary, grantee, agent, or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides, has provided, or will provide any portion of the money or property requested or demanded; if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded; or if the money or property is to be spent or used on behalf of or to advance the Georgia Medicaid program. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) “Knowing” and “knowingly” require no proof of specific intent to defraud and mean that a person, with respect to information:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

(C) Acts in reckless disregard of the truth or falsity of the information.

(3) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(4) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee based or similar relationship, from statute or regulation, or from retention of any overpayment.

(5) “Person” means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued. (Code 1981, § 49-4-168, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2012 amendment, effective July 1, 2012, in the first sentence of paragraph (1), substituted “money or property, whether or not the Georgia Medicaid program or this state has title to such money

or property” for “money, property, or services”, deleted “or” following “Georgia Medicaid program,”, inserted “, agent,” inserted “, has provided,”, substituted “demanded; if” for “demanded, or if”, and

added “; or if the money or property is to be spent or used on behalf of or to advance the Georgia Medicaid program” at the end; substituted “requires no proof of specific intent to defraud and means” for “mean” in the introductory paragraph of paragraph (2); deleted the former second sentence of subparagraph (2)(C), which read: “No proof of specific intent to defraud is required.”; added paragraphs (3) and (4); and redesignated former paragraph (3) as present paragraph (5).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (2).

Cross references. — Georgia Taxpayer Protection False Claims Act, § 23-3-120 et seq.

Law reviews. — For article, “A ‘False Claims Act’ Is Finally Enacted in Georgia: What Georgia Lawyers Should Know About the ‘State False Medicaid Claims Act’,” see 13 Ga. St. B.J. 12 (2007).

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and knowingly delivers, or causes to be delivered, less than all of such property or money;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit property or money to the Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit property or money to the Georgia Medicaid program,

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article. (Code 1981, § 49-4-168.1, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted “material to a false or fraudulent claim” for “to get a false or fraudulent claim paid or approved by the Georgia Medicaid program” in paragraph (a)(2); substituted “knowingly delivers, or causes to be delivered, less than all of such property or money” for “, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt” in paragraph (a)(4); substituted “Is” for “Being” at

the beginning of paragraph (a)(5); and substituted the present provisions of paragraph (a)(7) for the former provisions, which read: “Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the State of Georgia.”

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, “subsection (a) of this Code section” was substituted for “this subsection” in subsection (c).

49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation; stay of discovery; receipt of proceeds.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney

General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of such witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the

objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action

in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the

person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(k) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(l)(1) As used in this subsection, the term “original source” means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to publicly disclosed allegations or transactions and who has voluntarily provided such information to the Attorney General before filing a civil action under this Code section.

(2) The court shall dismiss a civil action or claim under this Code section, unless opposed by the Attorney General, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a congressional, legislative, or other state or federal report, hearing, audit, or investigation; or

(C) From the news media,

unless the civil action is brought by the Attorney General or the person bringing the civil action is an original source of the information. (Code 1981, § 49-4-168.2, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2012 amendment, effective July 1, 2012, substituted “State of Georgia, by and through the Georgia Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program” for “Indigent Care Trust Fund to be

used for the purposes set forth in Code Section 31-8-154” in the fourth sentence of paragraph (i)(1) and in the third sentence of paragraph (i)(2); in subsection (j), deleted the introductory language and paragraphs (j)(1) and (j)(2), relating to certain civil actions and redesignated former

paragraphs (j)(3) and (j)(4) as present subsections (j) and (k), respectively; inserted a comma following “refund” in subsection (k); and added subsection (l).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, substituted “the Department of Community Health” for “the Georgia Department of Community Health” in the fourth sentence of paragraph (i)(1) and in the second sentence of paragraph (i)(2).

49-4-168.3. Standard of proof; procedure; intervention by Attorney General.

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the “Georgia Civil Practice Act.”

(c) If the Attorney General elects to intervene and proceed with a civil action brought pursuant to this article, the Attorney General may file his or her own complaint or amend the complaint of a person who has brought a civil action under this article to clarify or add detail to the claims in which the Attorney General is intervening and to add any additional claims with respect to which the State of Georgia contends it is entitled to relief. For purposes of the statute of limitations, any such pleading by the Attorney General shall relate back to the filing date of the complaint of the person who originally brought the civil action, to the extent that the claim of the State of Georgia arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original complaint by such person. (Code 1981, § 49-4-168.3, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, added subsection (c).

49-4-168.4. Protection of employees from discrimination; relief; statute of limitations.

(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make such employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by such employee, contractor, agent or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article.

(b) Relief under subsection (a) of this Code section shall include reinstatement with the same seniority status that such employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. A civil action under this subsection may be brought in an appropriate court of this state for the relief provided in this Code section.

(c) Notwithstanding Code Section 49-4-168.5, a civil action under this Code section may not be brought more than three years after the date when the discrimination occurred. (Code 1981, § 49-4-168.4, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of this Code section for the former provisions, which read: "Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee or others, in furtherance of a civil action under this article, including investigation for, initiation of, testimony for, or assistance in a civil action filed or to be filed under this article, shall be entitled

to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring a civil action in an appropriate court of the State of Georgia for the relief provided in this Code section."

49-4-168.5. Statute of limitations.

All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within six years after the date the violation was committed, or four years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed. (Code 1981, § 49-4-168.5, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2012, p. 127, § 2-1/HB 822.)

The 2012 amendment, effective July 1, 2012, substituted "four years" for "three years" near the middle of this Code section.

49-4-168.6. Venue.

All civil actions brought against natural persons under this article shall be brought in the county where the defendant or, in the case of

multiple defendants or of defendants who are not residents of the State of Georgia, in any county where any one defendant resides, can be found, transacts business, or commits an act in furtherance of the submittal of a false or fraudulent claim to the Georgia Medicaid program. (Code 1981, § 49-4-168.6, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822.)

Editor's notes. — Ga. L. 2012, p. 127, § 2-1, effective July 1, 2012, reenacted this Code section without change.

ARTICLE 7C

THERAPY SERVICES FOR CHILDREN WITH DISABILITIES

49-4-169. Legislative findings and intent.

The General Assembly finds that changes in the approval process of certain health care programs have made it difficult for children with disabilities who are eligible for medical assistance pursuant to Article 7 of this chapter to receive the services to which they are entitled with the frequency and within the time periods which are appropriate. Separate administration of the categorically needy and the medically fragile programs should not result in any variation in the amount, duration, and scope of services. Redundant paperwork requirements have hampered service approvals and delivery and reduced the number of providers serving children. It is the intent of this article to ensure that children with disabilities receive the medically necessary therapy services to which they are entitled under the Medicaid Early Periodic Screening, Diagnostic, and Treatment Program and that categorically needy and medically fragile children have available to them the same scope, duration, and amount of services. It is also the intent of this article to simplify the process and paperwork by which occupational, speech, and physical therapy services are applied for and received by eligible recipients. (Code 1981, § 49-4-169, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.1. Definitions.

As used in this article, the term:

(1) "Correct or ameliorate" means to improve or maintain a child's health in the best condition possible, compensate for a health problem, prevent it from worsening, prevent the development of additional health problems, or improve or maintain a child's overall health, even if treatment or services will not cure the recipient's overall health.

(2) “Department” means the Department of Community Health.

(3) “EPSDT Program” means the federal Medicaid Early Periodic Screening, Diagnostic, and Treatment Program contained at 42 U.S.C.A. Sections 1396a and 1396d.

(4) “Medically necessary services” means services or treatments that are prescribed by a physician or other licensed practitioner, and which, pursuant to the EPSDT Program, diagnose or correct or ameliorate defects, physical and mental illnesses, and health conditions, whether or not such services are in the state plan.

(5) “Therapy services” means occupational therapy, speech therapy, physical therapy, or other services provided pursuant to the EPSDT Program to an eligible Medicaid beneficiary 21 years of age or younger and which are recommended as medically necessary by a physician. (Code 1981, § 49-4-169.1, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.2. Services and treatment for categorically needy and medically fragile children.

All persons who are 21 years of age or younger who are eligible for services under the EPSDT Program shall receive therapy services in accordance with the provisions of this article, whether they are categorically needy children enrolled in the low income Medicaid program or medically fragile children enrolled in the aged, blind, and disabled Medicaid program. (Code 1981, § 49-4-169.2, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.3. Requirements relating to administrative prior approval for services and appeals; statutory construction.

(a) The department shall develop and implement for itself, the care management organizations with which it enters into contracts, and its utilization review vendors consistent requirements, paperwork, and procedures for utilization review and prior approval of physical, occupational, or speech language pathologist services prescribed for children. Prior approval for therapy services shall be for a period of up to six months as consistent with the needs of the individual recipient.

(b) The department, its utilization review vendors, or the care management organizations with which it contracts shall give notice to affected Medicaid recipients of the following information in cases where prior approval is denied:

(1) The medical procedure or service for which such entity is refusing to grant prior approval;

(2) Any additional information needed from the recipient's medical provider which could change the decision of such entity; and

(3) The specific reason used by the entity to determine that the procedure is not medically necessary to the Medicaid recipient, including facts pertinent to the individual case.

(c) Notwithstanding any other provision of law, the department, its utilization review vendors, or its care management organizations shall grant prior approval for requests for therapy services when the recipient is eligible for Medicaid services and the services prescribed are medically necessary.

(d) In cases where prior approval is required under this article, it shall be decided with reasonable promptness, not to exceed 15 business days, and may not be denied until it has been evaluated under the EPSDT Program.

(e) Prescriptions and prior approval for services shall be for general areas of treatment, treatment goals, or ranges of specific treatments or processing codes. Clinical coverage criteria or guidelines, including restrictions such as location of service and prohibitions on multiple services on the same day or at the same time, shall not be the sole determinant used by the department, its utilization vendors, or its care management organizations to limit the EPSDT standards or its medically necessary definition in this article. Any such restrictions shall be waived under the EPSDT Program or this article if the prescribed services are medically necessary.

(f) Nothing in this article shall be construed to prohibit the department, its utilization review vendors, or its care management organizations from performing utilization reviews of the diagnosis or treatment of a child receiving therapy services pursuant to the EPSDT Program, the amount, duration, or scope or the actual performance or delivery of such services by providers, so long as such utilization review does not unreasonably deny or unreasonably delay the provision of medically necessary services to the recipient.

(g) Nothing in this article shall be deemed to prohibit or restrict the department, its utilization review vendors, or its care management organizations from denying claims or prosecuting or pursuing beneficiaries or providers who submit false or fraudulent prescriptions, forms required to implement this article, or claims for services or whose eligibility as a beneficiary or a participating provider has been based on intentionally false information. (Code 1981, § 49-4-169.3, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a comma was inserted following "physical" in the first sentence of subsection (a).

ARTICLE 8

PERSONAL REPRESENTATIVE TO MANAGE ASSISTANCE
PAYMENTS**49-4-170. Grounds for appointing personal representative; petition by county or district director.**

When any otherwise qualified applicant for or recipient of assistance under this chapter or payee, in the case of temporary assistance for needy families, is or shall become unable to manage the assistance payments or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or when, in the case of temporary assistance for needy families, the payment is not being used for the benefit of the children, a petition may be filed by the county or district director of family and children services before the probate court of the county in which the applicant resides or the county in which the recipient receives his check, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient or payee, which application shall allege one or more of the above grounds for the legal appointment of such personal representative. (Ga. L. 1964, p. 200, § 1; Ga. L. 1997, p. 1021, § 7.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

Law reviews. — For article comment-

49-4-171. Hearing on petition; appointment, duties, and removal of representative; court costs waived.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be served personally with a copy of the petition and order at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury; and if the court shall find that the applicant for or recipient of assistance under this chapter or the payee, in the case of temporary assistance for needy families, is unable to manage the assistance payments or otherwise fails so to manage to the extent that deprivation or hazard to himself or others results or, in the case of temporary assistance for needy families, the payment is not being used for the benefit of the children, the court may thereupon enter an order embracing such findings and appointing some responsible person as a personal representative of the applicant or recipient or of the payee, in the case of temporary assistance for needy families, for the purposes set forth in this article; provided, however, that no employee of the

Department of Human Services shall be eligible to hold such appointment. The personal representative so appointed shall serve without bond and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of assistance under this chapter or, in the case of temporary assistance for needy families, for the application of the payment to the best interest of the children. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the county director of family and children services in the selection of a suitable person for appointment as personal representative for the limited purposes of this Code section. The personal representative so appointed may be removed by the court and the proceedings dismissed or another suitable personal representative appointed. All costs of court with respect to any such proceeding shall be waived. (Ga. L. 1964, p. 200, § 2; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability. ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

Law reviews. — For article comment-

49-4-172. Appeal from order of appointment or removal.

Except as otherwise provided in Article 6 of Chapter 9 of Title 15, from the order of the court appointing or removing such personal representative, an appeal may be had to the judge of the superior court, who shall hear the matter de novo without a jury. (Ga. L. 1964, p. 200, § 3; Ga. L. 1986, p. 982, § 17.)

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

49-4-173. Maintenance of records by county or district director; use of facts and findings in other proceedings.

The court may, for the purposes of this Code section, direct the county or district director of family and children services to maintain records pertaining to all aspects of any personal representative proceedings, which records the court may adopt as the court's record and in lieu of maintenance of separate records by the court. The facts arrived at by the county or district director pursuant to this Code section and the findings of the court pursuant to this Code section shall not be competent as evidence in other proceedings dealing with any subject matter other than as provided in this article. (Ga. L. 1964, p. 200, § 4.)

ARTICLE 9

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article comment-

ing on the enactment of this article, see 14 Ga. St. U.L. Rev. 284 (1997). For article, “Child Welfare and Future Persons,” see 43 Ga. L. Rev. 367 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 8, 10, 73 et seq.

C.J.S. — 81 C.J.S., Social Security, §§ 183 et seq., 206.

49-4-180. Short title.

This article shall be known and may be cited as the “Temporary Assistance for Needy Families Act.” (Code 1981, § 49-4-180, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-181. Definitions.

As used in this article, the term:

- (1) “Applicant” means a person who applies for assistance under the state plan.
- (2) “Assistance” means the temporary assistance provided to needy families with children in accordance with Part A of Title IV of the federal Social Security Act, as amended, regulations promulgated pursuant thereto by the secretary of health and human services, all applicable laws of this state, the state plan, and regulations of the Board of Human Services.
- (3) “Board” means the Board of Human Services.
- (4) “Cash assistance” means the money payment component of TANF assistance.
- (5) “Department” means the Department of Human Services.
- (6) “Family” means one or more children living with a responsible parent, both parents, or other caretaker relative or legal guardian.
- (7) “Recipient” means a person who receives assistance pursuant to the state plan.
- (8) “State plan” means the plan submitted by the State of Georgia to the secretary of health and human services, pursuant to Part A of Title IV of the federal Social Security Act, as amended, particularly by the Act of August 22, 1996, Public Law 104-193, the Personal

Responsibility and Work Opportunity Reconciliation Act of 1996, as amended.

(9) "TANF" means temporary assistance for needy families.

(10) "Work activity" means a work activity as defined by Part A of Title IV of the federal Social Security Act, as amended. The term currently includes any of the following:

(A) Unsubsidized employment;

(B) Subsidized private sector employment;

(C) Subsidized public sector employment;

(D) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;

(E) On-the-job training;

(F) Job search and job readiness assistance, but such activity by a recipient shall be limited to no more than six weeks, only four weeks of which may be consecutive, unless the state's unemployment rate is 50 percent above the national average, in which case such activity shall be limited to no more than 12 weeks, only four weeks of which may be consecutive;

(G) Community service programs;

(H) Vocational educational training, not to exceed 12 months with respect to any individual;

(I) Job skills training directly related to employment;

(J) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(K) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate of high school equivalency; and

(L) The provision of child care services to an individual who is participating in a community service program.

In the event the definition of work activities in Part A of Title IV of the federal Social Security Act is amended to delete from or add to the list of activities contained in this paragraph, any such change or changes shall be incorporated into this paragraph. The minimum average number of hours per week of such work activity for not less than the

percentage of recipients comprising the minimum work participation rate in a given federal fiscal year shall be as follows:

If the month is in federal fiscal year	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

(11) "Work participation rate" means the percentage of TANF recipients who are required to engage in a work activity in accordance with Part A of Title IV of the federal Social Security Act, as amended. The minimum work participation rate with respect to all families receiving assistance under the Georgia TANF Program shall be, in accordance with current federal law, as follows:

If the federal fiscal year is:	The minimum participation rate is:
1997	25%
1998	30%
1999	35%
2000	40%
2001	45%
2002 or thereafter	50%

The minimum work participation rate with respect to two-parent families receiving assistance under the Georgia TANF Program shall be, in accordance with current federal law, as follows:

If the federal fiscal year is:	The minimum participation rate is:
1997	75%
1998	75%
1999 or thereafter	90%

Provided, however, that the work participation rates reflected in this paragraph may be adjusted due to caseload reductions in accordance with Part A of Title IV of the federal Social Security Act, as amended. (Code 1981, § 49-4-181, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

49-4-182. Temporary Assistance for Needy Families Program created.

(a) There is created the Georgia Temporary Assistance for Needy Families Program, which shall be known as the “Georgia TANF Program.” The purpose of such program is to provide necessary assistance to needy families with children on a temporary basis and to provide parents, legal guardians, or other caretaker relatives of children with the necessary support services to enable such parents, legal guardians, or caretaker relatives to become self-sufficient and leave the program as soon as possible. After an initial assessment and once the state determines an applicant is ready for work, applicants for assistance shall be required to engage in a work activity in accordance with Part A of Title IV of the federal Social Security Act, as amended, and the state plan as soon as possible after making application for assistance, but in any event no later than 24 months after first receiving cash assistance.

(b) Assistance shall be provided in accordance with the state plan and any future amendments thereto. Cash assistance to a recipient who is not a minor child and who is a head of a household or married to the head of a household shall be limited to a lifetime maximum of 48 months, whether or not consecutive, beginning January 1, 1997.

(c) Nothing in this article, the state plan, or any rules or regulations adopted pursuant to this article shall be interpreted to entitle any individual or any family to assistance under the Georgia TANF Program. (Code 1981, § 49-4-182, enacted by Ga. L. 1997, p. 1021, § 6.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in subsection (a) of this Code section, is codified at 42 U.S.C. § 601 et seq.

49-4-183. Administration of article by department; promulgation of rules and regulations by board; duties of department.

(a) This article shall be administered by the Department of Human Services. The Board of Human Services shall issue such rules and regulations as may be necessary to administer this article properly and

to comply with the requirements of Part A of Title IV of the federal Social Security Act, as amended, the state plan, and any future amendments to such Act or plan. The initial rules and regulations for the Georgia TANF Program shall be promulgated by the board pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and specifically Code Section 50-13-4 no later than July 1, 1997.

(b) The board shall ensure that such rules and regulations provide for:

(1) Methods of administration necessary for the proper and efficient operation of the state plan for implementation of this article;

(2) Reasonable standards for determining eligibility and the extent of assistance available for recipients;

(3) Consideration of the income and resources of an applicant for assistance in determining eligibility;

(4) Personal responsibility obligations and work activity requirements consistent with Part A of Title IV of the federal Social Security Act, as amended, and the state plan, provided that programs included in the personal responsibility obligations established by the board shall include counseling on abstinence until marriage;

(5) Criteria which make an applicant ineligible to receive benefits under the Georgia TANF Program, including but not limited to those specified in Code Section 49-4-184;

(6) Specific conduct which would authorize the reduction or termination of assistance to a recipient, including but not limited to that specified in Code Section 49-4-185;

(7) Standards whereby certain obligations, requirements, and criteria will be waived for specific applicants or recipients based on hardship;

(8) An administrative hearing process with hearings to be conducted by the Office of State Administrative Hearings in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and subsection (b) of Code Section 49-4-13;

(9) Safeguards which restrict the use and disclosure of information concerning applicants for and recipients of assistance under this article and in accordance with Code Section 49-4-14 and Part A of Title IV of the federal Social Security Act, as amended;

(10) Immunizations for specified diseases for preschool age children as a condition of assistance being provided for such children, and the schedule of and standards for administering such immunizations, including the presentation of a certificate of immunization, unless:

(A) There is appropriate evidence from the local health department or a physician that an immunization sequence has been started and can be completed within a period of up to 180 days, in which case a waiver of the immunization requirement for up to 180 days shall be granted;

(B) After examination by the local board of health or a physician, any preschool age child is found to have a physical disability which may make vaccination undesirable, in which case a certificate to that effect issued by the local board of health or the physician may be accepted in lieu of a certificate of immunization and shall exempt the child from obtaining a certificate of immunization until the disability is relieved;

(C) The parent or legal guardian furnishes an affidavit swearing or affirming that the immunization conflicts with the religious beliefs of the parent or legal guardian; or

(D) The implementation of such an immunization requirement violates any federal law or regulations or would result in the loss of any federal funds to this state; and

(11) The establishment and maintenance of individual development accounts. The funds in such accounts may be used for postsecondary educational expenses, the purchase of a first home, or business capitalization. The funds in such accounts shall not be considered in determining eligibility for cash assistance pursuant to 42 U.S.C. Section 604(h).

(c) The department shall:

(1) Supervise the administration of assistance pursuant to the Georgia TANF Program by the division of family and children services;

(2) Prescribe necessary forms and procedures to carry out the Georgia TANF Program, subject to the rules and regulations prescribed by the board pursuant to this article;

(3) Publish in print or electronically an annual report and such interim reports as may be necessary. The annual report and such interim reports shall be provided to the Governor and members of the General Assembly. The department shall not be required to distribute copies of the annual report or the interim reports to the members of the General Assembly but shall notify the members of the availability of the reports in the manner which it deems to be most effective and efficient. The annual report and interim reports shall contain the following:

(A) The total TANF caseload count;

(B) Quarterly and annual TANF reports, in full, prepared for submission to the federal government;

(C) The percentage of the TANF caseload and the number of individuals given a hardship exemption from the lifetime limit on cash assistance and a categorization of the reasons for such exemptions;

(D) The number of individuals who received transportation assistance and the cost of such assistance;

(E) The number of individuals who received diversionary assistance in order to prevent their requiring TANF assistance and the categories and cost of such diversionary assistance, and job acceptance and retention statistics;

(F) The number of individuals denied assistance due to a serious violent felony conviction;

(G) The number of mothers under 19 years of age who received assistance and their percentage of the total TANF caseload;

(H) The number of children receiving subsidized child care and the total and average per recipient cost of child care provided to TANF recipients;

(I) Data on teen pregnancy prevention;

(J) The number of families sanctioned;

(K) The number of legal immigrants receiving TANF benefits by category of immigration status;

(L) The number of families no longer eligible because of time limits;

(M) Follow-up information on job retention and earnings; and

(N) An evaluation of the effect of Code Section 49-4-186 on the number of births to TANF recipient families.

The information required under this paragraph shall be provided on a county-by-county basis where feasible; and

(4) Develop a plan, on or before January 1, 1998, to provide incentives for employers to hire those TANF recipients who have difficulty in finding employment. (Code 1981, § 49-4-183, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49; Ga. L. 2005, p. 1036, § 39/SB 49; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

JUDICIAL DECISIONS

Right to object to immunization on religious grounds not found. — Right to lodge religious objection to a child's immunization pursuant to O.C.G.A. § 20-2-771(e), O.C.G.A. § 31-12-3(b) or O.C.G.A. § 49-4-183(b)(10)(C) was not a residual right of the child's parents under O.C.G.A. § 15-11-13; thus, the mother of a child found to be deprived could not object to the immunization of the child on religious grounds. In re C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002).

49-4-184. Eligibility for assistance.

(a) An applicant is not eligible for assistance under this article and a recipient shall no longer be eligible for assistance under this article if:

(1) The applicant's or recipient's family does not include a minor child;

(2) The applicant or recipient does not cooperate with the department in establishing paternity, in providing assistance in a fraud and abuse investigation, or in establishing, modifying, or enforcing a support order with respect to a child of the applicant or recipient, and the applicant or recipient does not qualify for any good cause exception which may be established by the board;

(3) The applicant or recipient fails to assign to the department any rights that applicant or recipient may have to support from any other person, not exceeding the total amount of assistance so provided to the family which accrues or has accrued before the date the recipient family leaves the program, in accordance with the provisions of Part A of Title IV of the federal Social Security Act, as amended;

(4) The applicant or recipient is convicted of a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1 on or after January 1, 1997;

(5) The applicant or recipient is convicted of any felony under Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," on or after January 1, 1997;

(6) The applicant or recipient is under 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not completed a high school education or its equivalent, unless the applicant or recipient participates and obtains passing grades in:

(A) Educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) An alternative educational or training program that has been approved by the department;

(7) The applicant or recipient is under 18 years of age, has never married, and is either pregnant or has a minor child in his or her care, unless:

(A) The applicant or recipient and the child or children live in a place of residence maintained by the applicant's or recipient's parent, legal guardian, or other adult relative of the applicant or recipient as such parent's, legal guardian's, or other adult relative's own home; or

(B) The applicant or recipient lives in a foster home, maternity home, or other supportive living arrangement supervised by an adult;

(8) The applicant or recipient is fleeing to avoid prosecution or custody or confinement after conviction of a felony under the laws of the place from which the applicant or recipient is a fugitive;

(9) The applicant or recipient violates a condition of probation or parole imposed under state or federal law; or

(10) The recipient is pregnant and fails to participate actively in prenatal care arranged by the department at a level defined by the department.

(b) Paragraphs (6) and (7) of subsection (a) of this Code section shall not apply if the applicant or recipient has no parent or legal guardian whose whereabouts are known, no parent or legal guardian of the applicant or recipient allows the applicant or recipient to live in the home of that parent or legal guardian, or the department otherwise determines that there is good cause not to apply the prohibitions contained in said paragraphs. (Code 1981, § 49-4-184, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in paragraph (a)(3) of this Code section, is codified at 42 U.S.C. § 601 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 56 et seq.

49-4-185. Sanctions against recipient for failure to comply.

(a) As used in this Code section, the term “sanction” means a 25 percent reduction of any cash assistance provided to a family for a time period established by the board for the first material violation and termination of any cash assistance provided to the family for any subsequent material violation within a time period established by the

board; provided, however, that the department determine that there is good cause not to apply such a sanction in specific circumstances.

(b) A recipient shall be subject to sanction for failing to comply with the state plan if the recipient:

(1) Fails to report that a child is absent from home for a period of 45 consecutive days or, in the case of a child who is a recipient, being absent from home for a period of 45 consecutive days; provided, however, that a child who is a recipient shall not be sanctioned if the department determines there is good cause not to sanction the child under such circumstances;

(2) Violates any personal responsibility or work participation requirement; provided, however, that a single custodial parent with a child under 12 months of age may be exempt from any work participation requirement until adequate child care is available; or

(3) Except for violations of subsection (a) of Code Section 49-4-184 which result in the recipient no longer being eligible for assistance, violates any other term or condition specified in the federal Social Security Act, as amended, the state plan, or the rules and regulations of the board. (Code 1981, § 49-4-185, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 2000, p. 1137, § 8.)

U.S. Code. — The federal Social Security Act, referred to in paragraph (b)(3) of this Code section, is codified at 42 U.S.C. § 301 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 79 et seq.

49-4-186. Schedule of assistance to eliminate increment in benefits under TANF program as result of child birth during eligibility period.

The schedule of assistance to be paid to a recipient family under this article shall eliminate the increment in benefits under the Georgia TANF Program as a result of the birth of a child during the period in which the family is eligible for TANF assistance or during a temporary period in which the family or recipient is ineligible for TANF assistance pursuant to a sanction imposed for failure to comply with eligibility requirements, subsequent to which the family or recipient is again eligible for assistance. The recipient family in which the recipient parent gives birth to an additional child during the recipient's period of eligibility for TANF assistance, or during a temporary period of ineligibility for assistance, may not receive additional assistance, except in the case of a general increase in the amount of TANF assistance which

is provided to all program recipients. This provision shall only apply to recipient families who have been in receipt of cash assistance under this article for a total of ten months after May 1, 1997. Nothing in this Code section shall be considered to disqualify a recipient family from an incremental increase in assistance in cases in which the birth of a child is the result of a verifiable rape or incest. (Code 1981, § 49-4-186, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-187. Assistance for applicants moving into state after receiving assistance from another state.

An applicant who moves into this state after receiving assistance from another state under Part A of Title IV of the federal Social Security Act, as amended, if otherwise eligible to receive assistance under the Georgia TANF Program, shall receive the same level of assistance for the same period of time under the same requirements and restrictions as a resident of this state; provided, however, that for a period not to exceed 12 months, such applicant shall receive the same amount of cash assistance as that applicant received in his or her previous state of residence, if such amount is lower than the amount of cash assistance paid to a comparable family unit in this state; provided, further, that an applicant who moves into this state shall be eligible to receive cash assistance for the same time period for which he or she would have been eligible in his or her previous state of residence, if such time period is shorter than the maximum time period permitted for receipt of assistance in this state. (Code 1981, § 49-4-187, enacted by Ga. L. 1997, p. 1021, § 6.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

49-4-188. Assistance for qualified aliens.

(a) As used in this Code section, the term “qualified alien” means a qualified alien as defined in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Public Law 104-193.

(b) Qualified aliens will be eligible for assistance under the Georgia TANF Program upon meeting the same qualifications and conditions as other applicants. (Code 1981, § 49-4-188, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 850, § 1; Ga. L. 1999, p. 845, § 1; Ga. L. 2001, p. 790, § 1.)

U.S. Code. — Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsection (a) of this Code section, is codified at 8 U.S.C. § 1641.

Law reviews. — For review of 1998

legislation relating to social services, see
15 Ga. St. U.L. Rev. 232 (1998).

49-4-189. [Reserved].

Reserved.

Editor's notes. — This Code section was reserved by Ga. L. 1997, p. 1021, § 6, effective April 22, 1997.

49-4-190. Construction of article.

It is the intention of the General Assembly that this article be construed consistently with Part A of Title IV of the federal Social Security Act, as amended, and so as to authorize the Department of Human Services, within the appropriations provided to it, to administer the state plan in a manner so as to receive the maximum amount of the federal block grant available for expenditures made under the state plan. Nothing in this article shall be construed to impose requirements which conflict with such federal law or regulations promulgated thereunder so as to result in a loss of federal funding to this state under that law. (Code 1981, § 49-4-190, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 8, 10.

49-4-191. Establishment and enforcement of standards and procedures by department.

The department shall establish and enforce standards and procedures to:

(1) Screen and identify recipients of TANF assistance with a history of being victims of domestic violence, while protecting the confidentiality of any such recipients;

(2) Refer any such recipients to counseling and supportive services; and

(3) Waive, pursuant to a determination of good cause, other program requirements for any such recipients of TANF assistance, such as time limits, for so long as necessary, residency requirements, child support cooperation requirements, and family cap provisions, in

cases where compliance with such requirements would make it more difficult for individuals receiving TANF assistance to escape domestic violence or unfairly penalize such recipients who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. (Code 1981, § 49-4-191, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-192. Establishment of pilot LEARNFARE program.

(a) As used in this Code section, the term:

(1) "Program" means the LEARNFARE program established in this Code section.

(2) "Teen-ager" means a person at least 13 years of age but not more than 16 years of age who is included in a grant of TANF assistance, who is residing with a parent or guardian, and who has not graduated from high school or received a certificate of high school equivalency (GED).

(b) The purpose of this Code section is to establish a pilot LEARNFARE program that requires school attendance of all teen-agers.

(c) The department shall establish in not less than ten counties in this state a pilot LEARNFARE program. Such program shall require school attendance of all teen-agers.

(d) A teen-ager who is required to attend school to meet LEARNFARE participation requirements under this Code section shall comply except when there is good cause shown, as defined by the department.

(e) Upon determination that a teen-ager has failed without good cause to attend school as required, the teen-ager will be removed from the TANF grant for the next possible payment month.

(f) A sanction applied under this program shall be effective for one month for each month that the teen-ager failed to meet the monthly attendance requirement, as established by the department. In the case of a teen-ager who drops out of school, the sanction shall remain in force until the teen-ager provides written proof from the school system that the teen-ager has re-enrolled and has met the monthly attendance requirement for one calendar month.

(g) The department shall adopt not later than July 1, 1997, such rules and regulations as may be necessary to implement this program. The department shall establish by appropriate rules and regulations the eligibility and participation guidelines for such program.

(h) The department shall further provide, no later than January 1, 1999, a written report to the General Assembly which shall describe all actions taken to implement this program and the results and findings derived therefrom. (Code 1981, § 49-4-192, enacted by Ga. L. 1997, p. 1021, § 7.1.)

49-4-193. Established drug testing; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

(a) As used in this Code section, the term “established drug test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979, et seq., as amended) or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test which shall include the following:

- (1) Which illegal drugs will be the subject of testing;
- (2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;
- (3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;
- (5) A list of laboratories qualified to conduct established drug tests;
- (6) A list of approved substance abuse treatment providers;
- (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid specimens for such testing, to provide information regarding use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test;
- (8) A requirement that the test be conducted no later than 48 hours after the application is approved by the department for TANF eligibility. Proof of eligibility from the department shall be issued to the applicant. The applicant shall show proof of eligibility to an authorized test examiner prior to submitting to the test; and

(9) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and no authorized test examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c) The department shall require a drug test consistent with subsection (b) of this Code section to screen each individual who applies for assistance. The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (9) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of cash assistance under this article who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive TANF benefits as follows:

(1) For a first positive result, the recipient shall be ineligible for TANF benefits for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for TANF benefits for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for TANF benefits for one year and until he or she tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of drug testing to each individual at the time of application. The notice shall advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual shall bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. However, if the individual used an active and current Medicaid benefit pursuant to paragraph (9) of

subsection (b) of this Code section to subsidize the cost of the test, the individual shall not be eligible for direct TANF reimbursement. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug testing requirement;

(2) Require that for two-parent families, one parent shall comply with the drug testing requirement;

(3) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative shall comply with the drug testing requirement;

(4) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(5) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (1) and (4) of this subsection;

(6) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(7) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(8) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of this Code section that the individual may reapply for those benefits six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(9) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied TANF benefits for one year may reapply for TANF benefits after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. An individual who has met the requirements of this subsection and reapplies for TANF benefits shall also pass an initial

drug test and meet the requirements of subsection (c) of this Code section. Any drug test conducted while the individual is undergoing substance abuse treatment shall meet the requirements of subsection (b) of this Code section. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (c) of this Code section may reapply for TANF benefits under this subsection only once.

(g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this Code section:

(1) The dependent child's eligibility for TANF benefits shall not be affected;

(2) An appropriate protective payee shall be designated to receive benefits on behalf of the child; and

(3) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test done according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program

or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the mentally retarded, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-193, enacted by Ga. L. 2012, p. 91, § 3/HB 861.)

Effective date. — This Code section became effective July 1, 2012.

Cross references. — Drug-free workplace programs, T. 34, C. 9, A. 11. Random drug testing of employees in high risk jobs, T. 45, C. 20, A. 5. Drug testing for state employment, T. 45, C. 20, A. 6.

Editor's notes. — Ga. L. 2012, p. 91, § 1/HB 861, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Social Responsibility and Accountability Act.'"

Ga. L. 2012, p. 91, § 2/HB 861, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to:

"(1) Ensure that TANF funds are ultimately utilized for the intended purpose

of alleviating the effects of poverty and are not diverted to illicit drug use;

"(2) Protect children of poverty by ensuring such funds strengthen family life and reduce the danger that illicit drugs will be introduced into the home environment;

"(3) Assist adults addicted to drugs to avoid the temptation and restructure their lives by focusing on employment and becoming better parents; and

"(4) Ensure that the government does not subsidize the public health risk posed by drug use and the associated criminal activities."

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 224 (2012).

CHAPTER 4A

DEPARTMENT OF JUVENILE JUSTICE

Sec.		Sec.	
49-4A-1.	(For effective date, see note.) Definitions.		commitment; records; restitution.
49-4A-2.	(For effective date, see note.) Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; responsibilities duties.	49-4A-9.	(For effective date, see note.) Sentence of youthful offenders; modification of order; review; participation in programs.
49-4A-3.	(For effective date, see note.) Department of Juvenile Justice created; commissioner of juvenile justice; organization and operation of department.	49-4A-10.	(For effective date, see note.) Escape from juvenile detention facility; petition; commitment.
49-4A-4.	(For effective date, see note.) Purpose of chapter.	49-4A-11.	(For effective date, see note.) Aiding or encouraging child to escape; hindering apprehension of child.
49-4A-5.	(For effective date, see note.) Transfer of functions and employees of Division of Youth Services; personnel administration.	49-4A-12.	Special school district.
49-4A-6.	(For effective date, see note.) Rules and regulations.	49-4A-13.	Family attention home; assessment of risk and plan of care.
49-4A-7.	(For effective date, see note.) Powers and duties of department.	49-4A-14.	Compensation for damage to apparel by youth under custody.
49-4A-8.	(For effective date, see note.) Commitment of delinquent children; procedure; cost; return of mentally ill or developmentally disabled children; escapes; discharge; evidence of	49-4A-15.	Guard lines.
		49-4A-16.	(For effective date, see note.) Unlawful crossing or passage of certain items across guard lines; penalty.
		49-4A-17.	(For effective date, see note.) Introduction of certain items into juvenile detention facility prohibited; commerce with incarcerated youth.
		49-4A-18.	Prohibited possession of certain goods by youth.

Administrative rules and regulations. — Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-1.

Administrative revocations of juvenile community placement, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-2.

49-4A-1. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) “Board” means the Board of Juvenile Justice.

(2) “Child in need of services” means any child so adjudged under Article 5 of Chapter 11 of Title 15.

(3) “Commissioner” means the commissioner of juvenile justice.

(4) “Delinquent child” means any child so adjudged under Article 6 of Chapter 11 of Title 15.

(5) “Department” means the Department of Juvenile Justice.

(6) “Detention assessment” means an actuarial tool, approved by the board and validated on a targeted population, used to make detention decisions and that identifies and calculates specific factors that are likely to indicate a child’s risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.

(7) “Evidence based programs or practices” means programs, practices, procedures, and policies that scientific research demonstrates a likelihood to prevent or reduce juvenile delinquency or recidivism.

(8) “Juvenile detention facility” means hardware secure residential institutions or community residential locations operated by or on behalf of the department and may include youth development centers, regional youth detention centers, group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.

(9) “Recidivism” means a conviction or adjudication of delinquency for an offense or crime committed within three years of being placed on probation or being discharged or released from a juvenile detention facility.

(10) “Risk and needs assessment” means an actuarial tool, approved by the board and validated on a targeted population, that identifies and calculates specific factors that predict a child’s likelihood of recidivating and identifies criminal risk factors that, when properly addressed, can reduce such child’s likelihood of recidivating.

(11) “Risk assessment” means an actuarial tool, approved by the board and validated on a targeted population, that identifies and calculates specific factors that predict a child’s likelihood of recidivating. (Code 1981, § 49-4A-1, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 4; Ga. L. 2013, p. 294, § 3-1/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. Until January 1, 2014, this Code section reads as follows: “As used in this chapter, the term:

“(1) ‘Board’ means the Board of Juvenile Justice.

“(2) ‘Commissioner’ means the commissioner of juvenile justice.

“(3) ‘Delinquent or unruly child or youth’ means any person so adjudged under Article 1 of Chapter 11 of Title 15.

“(4) ‘Department’ means the Department of Juvenile Justice.”

The 2013 amendment, effective January 1, 2014, added paragraph (2); redesignated former paragraphs (2) through (4) as present paragraphs (3) through (5),

respectively; substituted “‘Delinquent child’ means any child so adjudged under Article 6” for “‘Delinquent or unruly child or youth’ means any person so adjudged under Article 1” in paragraph (4); and added paragraphs (6) through (11). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-2. (For effective date, see note.) Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; responsibilities duties.

(a)(1) There is created a Board of Juvenile Justice which shall establish the general policy to be followed by the Department of Juvenile Justice created in this chapter. The Board of Juvenile Justice shall be the successor entity to the Board of Children and Youth Services and the change is intended to be one of name only. The board shall consist of 15 members, with at least one but not more than two from each congressional district in the state, appointed by the Governor and confirmed by the Senate. The Governor shall make such appointments with a view toward achieving minority representation, representation of women, and equitable geographic representation on the board.

(2) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; three members shall be appointed for three years; three members shall be appointed for four years; and three members shall be appointed for five years. Thereafter, all succeeding appointments shall be for five-year terms from the expiration of the previous term.

(3) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(4) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(5) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and

in conformance with rates and allowances set for members of other state boards.

(b) (For effective date, see note.) The board shall:

(1) Provide leadership in developing programs to successfully rehabilitate delinquent children committed to the state's custody;

(2) Provide technical assistance to private and public entities for prevention programs for children at risk;

(3) Ensure that detention assessment, risk assessment, and risk and needs assessment instruments that are utilized by intake personnel and courts are developed in consultation with the Governor's Office for Children and Families and the Council of Juvenile Court Judges and ensure that such instruments are validated at least every five years;

(4) Adopt rules and regulations governing the management and treatment of children committed to the department to ensure that evidence based programs or practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to placing a committed child in a facility or into the community, preparing a child's release into the community, and managing children probationers in the community; and

(5) Require the department to collect and analyze data and performance outcomes, including, but not limited to, data collected and maintained pursuant to subsection (n) of Code Section 49-4A-8 and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Judiciary Non-civil and the Senate State Judiciary Committee.

(c) The board shall perform duties required of it by this chapter and shall, in addition thereto, be responsible for promulgation of all rules and regulations not in conflict with this chapter that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this chapter, and to the performance of the duties and functions of the department as set forth in this chapter.

(d) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this chapter and to restore and build up the

self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Code 1981, § 49-4A-2, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 5; Ga. L. 2013, p. 294, § 3-2/HB 242.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2014. Until January 1, 2014, subsection (b) reads as follows: “(b) The board shall provide leadership in developing programs to successfully rehabilitate juvenile delinquents and unruly children committed to the state’s custody and to provide technical assistance to private and public entities for prevention programs for children at risk.”

The 2013 amendment, effective January 1, 2014, rewrote subsection (b). See editor’s note for applicability.

Code Commission notes. — As enacted by Ga. L. 1992, p. 1983, § 24, this Code section did not contain a subsection (b). Pursuant to Code Section 28-9-5, in 1992, subsections (c), (d), and (e) were redesignated as present subsections (b), (c), and (d), respectively.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-3. (For effective date, see note.) Department of Juvenile Justice created; commissioner of juvenile justice; organization and operation of department.

(a) There is created the Department of Juvenile Justice and the position of commissioner of juvenile justice. The commissioner shall be the chief administrative officer of the department and shall be both appointed and removed by the board, subject to the approval of the Governor. The commissioner of human services shall not also serve as the commissioner of juvenile justice. Subject to the general policy and rules and regulations of the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions of the department.

(b) The department shall provide for supervision, detention, and rehabilitation of delinquent children committed to the state’s custody. The department shall also be authorized to operate prevention programs and to provide assistance to local public and private entities with prevention programs for children at risk. In lieu of commitment, the department shall be authorized to provide for specialized treatment for children adjudicated for delinquent acts involving sexual offenses or controlled substances and who may have behavior disorders. The department’s organization, operation, and implementation shall be based on the following:

(1) Development of a comprehensive continuum of service options using evidence based programs or practices through flexible funding to allow providers to respond to the unique needs and capabilities of individual children and families;

(2) Services implemented so that each child and family served can have a personal relationship with staff, providers, and workers, which staff, providers, and workers shall be trained and treated as professionals, have a range of multidisciplinary skills, and have manageable caseloads;

(3) Services shall be based on evidence based programs or practices and be community centered and responsive to local needs with state and local and public and private entities forming cooperative partnerships that enhance informal support systems for families;

(4) Systems that are accountable, with desired outcomes specified, results measured and evaluated, and cost-efficient options maximized;

(5) Intersystem communication and collaboration that are encouraged and facilitated through coordination of systems so that gaps and unnecessary duplications in planning, funding, and providing services are eliminated;

(6) Being consumer driven and responsive to the changing needs of individual communities; and

(7) Encouraging the central location of various services whenever possible. (Code 1981, § 49-4A-3, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 6; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2013, p. 294, § 3-3/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section effective until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, in subsection (a), deleted the former second sentence, which read: “The Department of Juvenile Justice shall be the successor entity to the Department of Children and Youth Services and the change is intended to be one of name only; and the commissioner of juvenile justice shall be the successor to the commissioner of children and youth services and the change is intended to be one of name only.”, substituted “department” for “Department of Juvenile Justice” in the second and last sentences, substituted “shall not” for “may not” in the third sentence,

and deleted “of juvenile justice” following “the commissioner” in the last sentence; in subsection (b), in the introductory paragraph, substituted “delinquent children” for “juvenile delinquents” in the first sentence, substituted “children” for “juveniles” in the second sentence, and rewrote the third sentence, which read: “Additionally, the department will be authorized to provide for specialized treatment for juvenile offenders, in lieu of commitment, who have been found to be sex offenders or drug abusers and who may have behavior disorders”; inserted “using evidence based programs or practices” in paragraph (b)(1); inserted “based on evidence based programs or practices and be” in paragraph (b)(3); substituted “Being consumer driven” for “The department shall be consumer driven” in paragraph (b)(6); and

substituted “Encouraging” for “The department shall encourage” in paragraph (b)(7). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed

by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-4. (For effective date, see note.) Purpose of chapter.

It is the purpose of this chapter to establish the department as the agency to administer, supervise, and manage juvenile detention facilities. (Code 1981, § 49-4A-4, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 7; Ga. L. 2013, p. 294, § 3-4/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, deleted the former second sentence, which read: “Except for the purposes of administration, supervision, and management as provided in this chapter, juvenile detention facilities shall continue to be detention care facilities for delinquent and unruly children and youth for the purposes of Article 1 of Chapter 11 of Title 15, relating to juvenile courts and juvenile proceedings.” See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294,

§ 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-5. (For effective date, see note.) Transfer of functions and employees of Division of Youth Services; personnel administration.

(a) (For effective date, see note.) The department shall carry out all functions and exercise all powers relating to the administration, supervision, and management of juvenile detention facilities, and jurisdiction over such juvenile detention facilities is vested in the department.

(b) Any employees of the Department of Juvenile Justice who became so employed by virtue of their transfer from the Division of Youth Services of the Department of Human Resources (now known as the Department of Human Services) on June 30, 1992, shall retain their

compensation and benefits and such may not be reduced. Transferred employees who were subject to the state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted under such system as a result of such transfer. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on July 1, 1992, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 1992. Accrued annual and sick leave possessed by said employees on June 30, 1992, shall be retained by said employees as employees of the department.

(c)(1) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(2) The department is authorized to employ, on a full-time or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(3) Classified employees of the department under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(4) All personnel of the department are authorized to be members of the Employees' Retirement System of Georgia created in Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this chapter to the department, or otherwise had by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department. (Code 1981, § 49-4A-5, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 8; Ga. L. 1998, p. 128, § 49; Ga. L. 2009, p. 453, § 2-22/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-97/HB 642; Ga. L. 2013, p. 294, § 3-5/HB 242.)

Delayed effective date. — Subsection (a), as set out above, becomes effective January 1, 2014. For version of subsection (a) in effect until January 1, 2014, see the 2013 amendment note.

The 2012 amendment, effective July 1, 2012, substituted "state system of personnel administration provided for by Chapter 20 of Title 45 will lose no rights granted under such system as a result of

such transfer” for “State Personnel Administration shall retain all existing rights under the State Personnel Administration” in the second sentence of subsection (b); and substituted “State Personnel Board” for “State Personnel Administration” in paragraph (c)(3).

The 2013 amendment, effective January 1, 2014, substituted “and jurisdiction over such” for “including youth development centers, and jurisdiction over said youth development centers and other” in subsection (a). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions

which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Administrative rules and regulations. — Request for information, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Rules of General Applicability, § 97-1-.06.

49-4A-6. (For effective date, see note.) Rules and regulations.

(a) The board shall adopt rules and regulations for the government, operation, administration, and maintenance of juvenile detention facilities and may also adopt such other rules and regulations for the government and operation of the department as the board may deem necessary consistent with the provisions of this chapter.

(b) Rules and regulations adopted by the board under subsection (a) of this Code section shall recognize that a primary purpose of juvenile detention facilities is to carry out rehabilitative programs using evidence based programs or practices to the end that children housed in such facilities develop self-respect and self-reliance and acquire the necessary knowledge and skills to become good citizens who are qualified for honorable employment. (Code 1981, § 49-4A-6, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 2013, p. 294, § 3-6/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, in the middle of subsection

(a), deleted “youth development centers and other” following “maintenance of” and deleted “by the department” following “facilities”; and, in subsection (b), deleted “youth development centers and other” following “purpose of”, inserted “using evidence based programs or practices” near

the middle, and substituted “children housed in such facilities develop self-respect” for “children and youth housed in said centers shall develop their self-respect”. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-7. (For effective date, see note.) Powers and duties of department.

(a) The department shall be authorized to:

(1) Accept for detention in a juvenile detention facility any child who is committed to the department under Article 6 of Chapter 11 of Title 15;

(2) Provide probation and other court services for children pursuant to a request from a court under Article 6 of Chapter 11 of Title 15;

(3) Provide casework services and care or payment of maintenance costs for children who have run away from their home communities within this state or from their home communities in this state to another state or from their home communities in another state to this state; pay the costs of returning such runaway children to their home communities; and provide such services, care, or costs for runaway children as may be required under Chapter 3 of Title 39;

(4) Enter into contracts and cooperative agreements with federal, state, county, and municipal governments and their agencies and departments; enter into contracts with public and private institutions and agencies of this and other states; enter into leases with private vendors selected to operate programs on behalf of the department which shall run concurrently with the department’s service contracts; provided, however, that any such lease shall provide that if the property which is the subject of the lease is sold and conveyed during the term of the lease, such lease shall expire by operation of law 90 days after the closing of such sale and conveyance; and enter into contracts with individuals, as may be necessary or desirable in effectuating the purposes of this chapter; and

(5) Solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes.

(b) When given legal custody over a child for detention in a juvenile detention facility under court order under Article 6 of Chapter 11 of Title 15, the department shall have:

- (1) The right of physical possession of such child;
- (2) The right and duty to protect, train, and discipline such child;
- (3) The responsibility to provide such child with food, clothing, shelter, and education;
- (4) The right to determine in which facility such child shall live and to transfer such child as provided in subsection (b) of Code Section 42-5-52; and
- (5) The right and duty to provide or obtain for such child medical, hospital, psychiatric, surgical, or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.

(c) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner; provided, however, that any contract or agreement that provides services to delinquent children shall be a performance based contract that includes financial incentives or consequences based on the results achieved by the contractor as measured by output, quality, or outcome measures. (Code 1981, § 49-4A-7, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1994, p. 304, § 1; Ga. L. 1995, p. 955, § 1; Ga. L. 1997, p. 1414, § 1; Ga. L. 1998, p. 128, § 49; Ga. L. 2013, p. 294, § 3-7/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, substituted “Article 6” for “Article 1” throughout this Code section; in paragraph (a)(1), deleted “youth development center or other” preceding “juvenile detention”; in paragraph (a)(2), deleted “and parole” following “probation”, and deleted “and youth” following “children”; in paragraph (a)(3), deleted “and youths” following “children” three times; in paragraph (a)(4), deleted “leases” following “department which” near the middle; in subsection (b), in the introductory paragraph, deleted “or youth” following “a child”, substituted “juvenile detention” for “youth development center or other”; in

paragraphs (b)(1) through (b)(4), substituted “such child” for “the child or youth”; in paragraph (b)(4), inserted “and to transfer such child as provided in subsection (b) of Code Section 42-5-52”; in paragraph (b)(5), substituted “such child” for “a child or youth”; and added the proviso at the end of subsection (c). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different

penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any

prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

JUDICIAL DECISIONS

Medical care. — State had a duty to provide youth in their custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia

Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Department of Children & Youth Servs.*, 236 Ga. App. 696, 512 S.E.2d 339 (1999).

OPINIONS OF THE ATTORNEY GENERAL

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in the Department of Juvenile Jus-

tice facilities prior to a formal commitment to the department are properly assessed to the counties. 2002 Op. Att’y Gen. No. 2002-6.

49-4A-8. (For effective date, see note.) Commitment of delinquent children; procedure; cost; return of mentally ill or developmentally disabled children; escapees; discharge; evidence of commitment; records; restitution.

(a) When the court does not release a delinquent child unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit such child to the department as provided in Article 6 of Chapter 11 of Title 15; provided, however, that no delinquent child shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent children.

(b) When the court commits a delinquent child to the department, it may order such child conveyed forthwith to any facility designated by the department or direct that such child be left at liberty until otherwise ordered by the department under such conditions as will ensure his or her availability and submission to any orders of the department. If such delinquent child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the person assigned to convey a girl must be female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

(c) When a court commits a delinquent child to the department, the court shall at once electronically submit a certified copy of the order of

commitment to the department, and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession pertaining to the case, including, but not limited to, any predisposition investigation report as set forth in Code Section 15-11-590 and any risk assessment. Such reports shall, if the department so requests, be made upon forms furnished by the department or according to an outline provided by the department.

(d)(1) When a delinquent child has been committed to the department, the department shall, under rules and regulations established by the board, forthwith examine and study such child and investigate all pertinent circumstances of his or her life and behavior. The department shall make periodic reexaminations of all such children within its control, except those on release under supervision of the department. Such reexaminations may be made as frequently as the department considers desirable, and every such child shall be reexamined at intervals not exceeding one year. Failure of the department to examine such a child committed to it or to reexamine him or her within one year of a previous examination shall not of itself entitle such child to discharge from control of the department but shall entitle such child to petition the committing court for an order of discharge; and the court shall discharge him or her unless the department, upon due notice, satisfies the court of the necessity of further control.

(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent child subject to its control. Records maintained by the department pertaining to a delinquent child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law regarding disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Except as provided by subsection (e.1) of this Code section and subsection (c) or (d) of Code Section 15-11-602, when a delinquent child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for such child's care and treatment has been completed, the department may:

(1) Permit such child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

(2) Order such child's confinement under such conditions as the department may believe best designed to serve such child's welfare and as may be in the best interest of the public;

(3) Order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) Revoke or modify any order of the department affecting such child, except an order of final discharge, as often as conditions indicate to be desirable; or

(5) Discharge such child from control of the department pursuant to Code Section 15-11-32 and subsection (c) of Code Section 15-11-607 when it is satisfied that such discharge will best serve such child's welfare and the protection of the public.

(e.1)(1) When a child who has been adjudicated for the commission of a class A designated felony act or class B designated felony act as defined in Code Section 15-11-2 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of such child's acts that such child is being released from confinement or custody.

(2) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by paragraph (1) of this subsection.

(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent act or class A designated felony act or class B designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

(4) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide notice required by paragraph (3) of this subsection.

(f) As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the department may:

(1) Require participation by such child in moral, academic, vocational, physical, and correctional training and activities, and provide such child the opportunity for religious activities where practicable in the institutions under the control and supervision of the department;

(2) Require such modes of life and conduct as may seem best adapted to fit and equip him or her for return to full liberty without danger to the public;

(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

(4) Place him or her, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

(g) When funds are available, the department may:

(1) Establish and operate places for detention and diagnosis of all delinquent children committed to it;

(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

(3) Establish aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

(h) Whenever the department finds that any child committed to the department is mentally ill or has a developmental disability, as defined in Code Section 15-11-2, the department shall have the power to return such child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the juvenile detention facility is located to take such action as the condition of the child may require.

(i)(1) A child who has been committed to the department for detention in a juvenile detention facility or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, or any other officer of this state authorized to serve criminal process upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, such written request shall be reviewed by the commissioner or his or her designee. If the commissioner or his or her designee finds that probable cause exists to believe that such child has violated his or her conditions of supervision, he or she may issue an order directing that such child be picked up and returned to custody.

(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children or children in need of services in its institutions, facilities, or programs, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children or children in need of services retained by the person or organization if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend children who have escaped from a juvenile detention facility or who have broken the conditions of supervision; provided, however, that the employees so designated shall only be those with primary responsibility for the security functions of such facilities or whose primary duty consists of the apprehension of youths who have escaped from such facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126 and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent children or children in need of services detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and shall be certified under that chapter.

(3) For the purposes of investigation of children who have escaped from juvenile detention facilities of the department or of children who

are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon personal knowledge or written request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-501. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take such child into custody.

(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

(j) The department shall ensure that each child it releases under supervision or otherwise has suitable clothing, transportation to his or her home or to the county in which a suitable home or employment has been found for him or her, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to such child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

(k) Every child committed to the department, if not already discharged, shall be discharged from custody of the department when he or she reaches his or her twenty-first birthday.

(l) Commitment of a child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or being in need of services involving the same child and except in imposing sentence in any criminal proceeding against the same person.

(n)(1) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate and coordinate with courts, juvenile court clerks, the Governor's Office for Children and Families, and public and private agencies in the collection of statistics and information regarding:

(A) Juvenile delinquency;

(B) Arrests made;

(C) Detentions made, the offense for which such detention was authorized, and the reason for each detention;

(D) Complaints filed;

(E) Informations filed;

(F) Petitions filed;

(G) The results of complaints, informations, and petitions, including whether such filings were dismissed, diverted, or adjudicated;

(H) Commitments to the department, the length of such commitment, and releases from the department;

(I) The department's placement decisions for commitments;

(J) Placement decisions to institutions, camps, or other facilities for delinquent children operated under the direction of courts or other local public authorities;

(K) Community programs utilized and completion data for such programs;

(L) Recidivism;

(M) Data collected by juvenile court clerks pursuant to Code Section 15-11-64; and

(N) Other information useful in determining the amount and causes of juvenile delinquency in this state.

(2) In order to facilitate the collection of the information required by paragraph (1) of this subsection, the department shall be authorized to inspect and copy all records of the court and law enforcement

agencies pertaining to juveniles and collect data from juvenile court clerks.

(o) When a child committed to the department is under court order to make certain restitution as a part of his or her treatment by the court, the requirement that the restitution be paid in full shall not cease with the order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment, and the department is empowered to enforce such restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge. (Code 1981, § 49-4A-8, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1993, p. 313, § 1; Ga. L. 1995, p. 619, § 8; Ga. L. 1996, p. 1016, §§ 1, 2; Ga. L. 1997, p. 582, § 3; Ga. L. 2000, p. 20, § 26; Ga. L. 2006, p. 293, § 4/HB 1145; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 963, § 2-20/SB 308; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2013, p. 294, § 3-8/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. Until January 1, 2014, this Code section reads as follows: “(a) When any child or youth is adjudged to be in a state of delinquency or unruliness under Article 1 of Chapter 11 of Title 15 and the court does not release such child or youth unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit him to the department as provided in said Article 1 of Chapter 11 of Title 15; provided, however, that no delinquent or unruly child or youth shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent or unruly children and youths.

“(b) When the court commits a delinquent or unruly child to the department, it may order the child conveyed forthwith to any facility designated by the department or direct that the child be left at liberty until otherwise ordered by the department under such conditions as will ensure his availability and submission to any orders of the department. If such delinquent or unruly child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the per-

son assigned to convey a girl must be a female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

“(c) When a court commits a delinquent or unruly child to the department, the court shall at once forward to the department a certified copy of the order of commitment and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession with respect to the case. Such reports shall, if the department so requests, be made upon forms furnished by the department or according to an outline provided by the department.

“(d)(1) When a delinquent or unruly child has been committed to the department, the department shall, under rules and regulations established by the board, forthwith examine and study the child and investigate all pertinent circumstances of his life and behavior. The department shall make periodic reexaminations of all delinquent or unruly children within its control, except those on release under supervision of the department.

Such reexaminations may be made as frequently as the department considers desirable and shall be made with respect to every child at intervals not exceeding one year. Failure of the department to examine a delinquent or unruly child committed to it or to reexamine him within one year of a previous examination shall not of itself entitle the child to discharge from control of the department but shall entitle the child to petition the committing court for an order of discharge; and the court shall discharge him unless the department, upon due notice, satisfies the court of the necessity of further control.

“(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent or unruly child subject to its control. Records maintained by the department with respect to a delinquent or unruly child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law in regard to disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

“(e) Except as provided by subsection (e.1) of this Code section and subsection (b) of Code Section 15-11-70, when a delinquent or unruly child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for the child’s care and treatment has been completed, the department may:

“(1) Permit the child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

“(2) Order the child’s confinement under such conditions as the department may believe best designed to serve the child’s welfare and as may be in the best interest of the public;

“(3) Order recommitment or renewed release as often as conditions indicate to be desirable;

“(4) Revoke or modify any order of the department affecting the child, except an order of final discharge, as often as conditions indicate to be desirable; or

“(5) Discharge the child from control of the department pursuant to subsection (a) of Code Section 15-11-70 when it is satisfied that such discharge will best serve the child’s welfare and the protection of the public.

“(e.1)(1) When a child who has been adjudicated delinquent for the commission of a designated felony act as defined in Code Section 15-11-63 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of the child’s delinquent acts that the child is being released from confinement or custody.

“(2) So long as a good faith attempt to comply with paragraph (1) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department’s failure to provide the notice required by paragraph (1) of this subsection.

“(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent or designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

“(4) So long as a good faith attempt to comply with paragraph (3) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department’s failure to provide notice required by paragraph (3) of this subsection.

“(f) As a means of correcting the socially harmful tendencies of a delinquent or unruly child committed to it, the department may:

“(1) Require participation by youth in moral, academic, vocational, physical, and correctional training and activities, and provide youth the opportunity for religious activities where practicable in the

institutions under the control and supervision of the department;

“(2) Require such modes of life and conduct as may seem best adapted to fit and equip him for return to full liberty without danger to the public;

“(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

“(4) Place him, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

“(g) When funds are available, the department may:

“(1) Establish and operate places for detention and diagnosis of all delinquent or unruly children committed to it;

“(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

“(3) Establish parole or aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

“(h) Whenever the department finds that any delinquent or unruly child committed to the department is mentally ill or mentally retarded, the department shall have the power to return such delinquent or unruly child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the youth development center or other facility is located to take such action as the condition of the child may require.

“(i)(1) A child who has been committed to the department as a delinquent or unruly child for detention in a youth development center or who has been otherwise taken into custody and who has escaped

therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, parole officer, or any other officer of this state authorized to serve criminal process upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, such written request must be reviewed by the commissioner or his designee. If the commissioner or his designee finds that probable cause exists to believe that the child has violated his conditions of supervision, he may issue an order directing that the child be picked up and returned to custody.

“(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in its institutions, facilities, or programs, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children retained by the person or organization, if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend delinquent and unruly children who have escaped from an institution or facility or who have broken the conditions of supervision; provided, however, that the employees so designated shall only be those with primary responsibility for the security functions of youth development cen-

ters or whose primary duty consists of the apprehension of youths who have escaped from such institutions or facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126 and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent and unruly children detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and must be certified under that chapter.

“(3) For the purposes of investigation of delinquent or unruly children who have escaped from institutions or facilities of the department or of delinquent or unruly children who are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center, established by Chapter 3 of Title 35, any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

“(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon personal knowledge or written

request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-45. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take the child into custody.

“(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

“(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

“(j) The department shall ensure that each delinquent or unruly child it releases under supervision or otherwise has suitable clothing, transportation to his home or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to a delinquent or unruly child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

“(k) Every child committed to the department as delinquent or unruly, if not already discharged, shall be discharged from custody of the department when he reaches his twenty-first birthday.

“(l) Commitment of a delinquent or unruly child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

“(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or unruliness involving the same child and except in imposing sen-

tence in any criminal proceeding against the same person.

“(n) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate with courts and public and private agencies in the collection of statistics and information regarding juvenile delinquency; arrests made; complaints, informations, and petitions filed; the disposition made thereof; and other information useful in determining the amount and causes of juvenile delinquency in this state. In order to facilitate the collection of such information, the department shall be authorized to inspect and copy all records of the court and law enforcement agencies pertaining to juveniles.

“(o) When a child who is committed to the department is under court order to make certain restitution as a part of his treatment by the court, the requirement that the restitution be paid in full shall not cease with the order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment and the department is empowered to enforce said restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge.”

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in this Code section. See editor’s note for extent of application. The second 2013 amendment, effective January 1, 2014, rewrote this Code section. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2006, p. 293, Part II, § 2/HB 1145, not codified by the

General Assembly, provided that the changes made by Part II of that Act shall be known and may be cited as “Amy’s Law”. Part II of Ga. L. 2006, p. 293 amended Code Sections 15-11-70 and 49-4A-8.

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010 and shall not affect any prosecutions for acts occurring before June 4, 2010 and shall not act as an abatement of any such prosecution.

Ga. L. 2013, p. 141, § 54(f)/HB79, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendments to subsection (e.1) and paragraph (i)(1) of this Code section by Ga. L. 2013, p. 141, § 49/HB79 will not be given effect in this Code section effective January 1, 2014.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U.L. Rev. 131 (2011).

For note on the 1995 amendment of this Code section and O.C.G.A. § 49-4A-9, see 12 Ga. St. U.L. Rev. 80 (1995).

JUDICIAL DECISIONS

Transfer to youth development center without hearing. — Juvenile's constitutional rights were not violated when a probation officer made the decision to transport the juvenile to a regional youth development center without a hearing. *Sawyer v. Coleman*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

Pursuit of escaped juvenile. — Probation officer did not violate O.C.G.A.

§ 49-4A-8(i)(1) when the officer personally pursued a juvenile after the juvenile ran away while the officer was attempting to transport the juvenile to a regional youth development center. *Sawyer v. Coleman*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

Cited in *In the Interest of B. Q. L. E.*, 297 Ga. App. 273, 676 S.E.2d 742 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for providing education. — When a student is committed to the department, the educational agency responsible for providing a free and appropriate public education under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is either the department or the local school district in which the student resides. 1995 Op. Att'y Gen. No. 95-6.

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in Department of Juvenile Justice facilities prior to a formal commitment to the department are properly assessed to the counties. 2002 Op. Att'y Gen. No. 2002-6.

49-4A-9. (For effective date, see note.) Sentence of youthful offenders; modification of order; review; participation in programs.

(a) Any child who has previously been adjudged to have committed an act which is a felony if tried in a superior court and who, on a second or subsequent occasion, is convicted of a felony in a superior court may, in the discretion of the court, be sentenced into the custody of the department as otherwise provided by law or be committed as a youthful offender as authorized in Chapter 7 of Title 42; provided, further, that any child convicted of a felony punishable by death or by confinement for life shall only be sentenced into the custody of the Department of Corrections.

(b) (For effective date, see note.) Any final order of judgment by the court in the case of any such child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child. No commitment of any child to any institution or other custodial agency shall deprive the court of jurisdiction to change the form of the commitment or transfer the custody of the child to some other institution or agency on such conditions as the court may see fit to impose, the duty being constant upon the court to give to all children subject to its jurisdiction such oversight and control in the premises as will be conducive to the welfare of the child and the best interests of the state; provided, however, that the release of any child committed to the

department for detention in any of its institutions under the terms of this chapter during the period of one year from the date of commitment shall be had only with the concurrence and recommendation of the commissioner or the commissioner's designated representative; provided, further, that upon releasing any child adjudicated for committing a delinquent act for the commission of a class A designated felony act or class B designated felony act as defined in Code Section 15-11-2 and committed to the department for detention in any of its institutions under the terms of this chapter, the department shall provide notice to any person who was the victim of the child's delinquent acts that the child is being released. So long as a good faith attempt to comply with the notice requirement of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by this subsection.

(c) After the expiration of one year from the date of commitment, the committing court shall review the case and make such order with respect to the continued confinement or release of the child back to the committing court for further disposition as the court deems proper.

(d) In the event adequate facilities are not available, the department shall have the right to transfer youths committed to the department under this Code section to the Department of Corrections for incarceration in an appropriate facility designated by the Department of Corrections.

(e) (For effective date, see note.) Any child under 17 years of age who is sentenced in the superior court and committed to the department may be eligible to participate in all juvenile detention facility programs and services including community work programs, sheltered workshops, special state sponsored programs for evaluation and services under the Georgia Vocational Rehabilitation Agency and the Department of Behavioral Health and Developmental Disabilities, and under the general supervision of juvenile detention facility staff at special planned activities outside of the juvenile detention facility. When such a child sentenced in the superior court is approaching his or her seventeenth birthday, the department shall notify the court that a further disposition of the child is necessary. The department shall provide the court with information concerning the participation and progress of the child in programs described in this subsection. The court shall review the case and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law. (Code 1981, § 49-4A-9, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1995, p. 619, § 9; Ga. L. 2000, p. 20, § 27;

Ga. L. 2000, p. 1137, § 2; Ga. L. 2002, p. 1324, § 1-22; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2012, p. 303, § 3/HB 1146; Ga. L. 2013, p. 294, § 3-9/HB 242.)

Delayed effective date. — Subsections (b) and (e), as set out above, become effective January 1, 2014. For version of subsections (b) and (e) in effect until January 1, 2014, see the 2013 amendment note.

The 2012 amendment, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in the first sentence of subsection (e).

The 2013 amendment, effective January 1, 2014, in subsection (b), in the second sentence, deleted “or parole” preceding “of any child” in the first proviso, in the second proviso, deleted “or paroling” following “upon releasing”, substituted “for committing a delinquent act” for “delinquent”, inserted “class A designated felony act or class B”, substituted “Code Section 15-11-2” for “Code Section 15-11-63”, and deleted “or paroled” following “released” at the end, and, in the last sentence, substituted “So long as” for “As long as” at the beginning; and, in subsection (e), substituted “juvenile detention facility” for

“youth development center” three times in the first sentence. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Administrative rules and regulations. — Administrative revocations of juvenile community placement, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-2.

OPINIONS OF THE ATTORNEY GENERAL

Application to juveniles prosecuted as adults. — O.C.G.A. § 49-4A-9(e) applies to all juveniles convicted of a felony in superior court, except those for which

potential punishments include the death penalty or life imprisonment. 1996 Op. Att’y Gen. No. U96-5.

RESEARCH REFERENCES

ALR. — State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Constitutional issues, 37 ALR6th 55.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — duty to register, re-

quirements for registration, and procedural matters, 38 ALR6th 1.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — expungement, stay or deferral, exceptions, exemptions, and waiver, 39 ALR6th 577.

49-4A-10. (For effective date, see note.) Escape from juvenile detention facility; petition; commitment.

Whenever any child shall escape from any juvenile detention facility, the department shall file a petition in the court having jurisdiction and, upon conviction, he or she shall be committed for an additional 12 months in a juvenile detention facility under the jurisdiction of the department or to another institution under the Department of Corrections. (Code 1981, § 49-4A-10, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 2013, p. 294, § 3-10/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, substituted “juvenile detention facility” for “youth development center” twice. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and

shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-4A-11. (For effective date, see note.) Aiding or encouraging child to escape; hindering apprehension of child.

(a) (For effective date, see note.) Any person who shall knowingly aid, assist, or encourage any child who has been committed to the department to escape or to attempt to escape its control or custody shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(b) (For effective date, see note.) Any person who shall knowingly harbor or shelter any child who has escaped the lawful custody or control of the department shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c) Any person who shall knowingly hinder the apprehension of any child under the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 49-4A-11, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1996, p. 988, § 3; Ga. L. 2012, p. 1339, § 1A/SB 366; Ga. L. 2013, p. 294, § 3-11/HB 242.)

Delayed effective date. — Subsections (a) and (b), as set out above, become effective January 1, 2014. For version of subsections (a) and (b) in effect until January 1, 2014, see the 2013 amendment note.

The 2012 amendment, effective July 1, 2012, substituted “punished by imprisonment” for “imprisoned” near the end of subsections (a) through (c); and deleted former subsections (d) and (e), which read: “(d) Any person who shall knowingly provide to any child under the lawful control or custody of the department a gun, pistol, or any other weapon, any intoxicating liquor, any controlled substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to department personnel without the consent of the director of the institution providing care and supervision to the child shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

“(e) Any child who shall knowingly possess a gun, pistol, or any other weapon, any intoxicating liquor, any controlled substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to depart-

ment personnel given to said child in violation of subsection (d) of this Code section while under the lawful custody or control of the department shall cause the department to file a delinquency petition in the court having jurisdiction; provided, however, if such person is 17 or older and is under the lawful custody or control of the department, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.” See editor’s note for applicability.

The 2013 amendment, effective January 1, 2014, deleted “or youth” following “child” near the beginning of subsections (a) and (b). See editor’s note for applicability.

Editor’s notes. — Ga. L. 1996, p. 988, § 3, not codified by the General Assembly, makes this Code section applicable to offenses committed on or after July 1, 1996.

Ga. L. 2012, p. 1339, § 3/SB 366, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses committed on or after July 1, 2012.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For review of 1996 children and youth services legislation, see 13 Ga. U.L. Rev. 314 (1996).

49-4A-12. Special school district.

(a) The Department of Juvenile Justice shall be a special school district which shall be given the same funding consideration for federal funds that school districts within the state are given.

(b) The schools within the department shall be under the control of the commissioner who shall serve as the superintendent of schools for such district. The Board of Juvenile Justice shall serve as the board of education for such district.

(c)(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the State Board of Education. It is the intent of this Code section to fund educational services and programs in this special school district so that youth served therein shall receive the same quality and content of educational services as provided to youth in school districts within the state.

(2) The State School Superintendent may grant waivers for such provisions of the laws and regulations with which the schools cannot comply because of their functioning on an annual basis and in response to the commissioner or the commissioner's designee's written request and justification. Such exceptions shall be in writing.

(d)(1) Each teacher in the special school district shall receive annual compensation at the rate specified for the type of certificate held by such teacher based on the appropriate teacher salary schedules established pursuant to Code Section 20-2-212.

(2) This provision shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection.

(e) The commissioner shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f)(1) Nothing in the language of this Code section shall be construed as prohibiting any local school district from issuing a diploma to a youth in the custody of the department, upon certification of the principal of a departmental school.

(2) School records of any juvenile in the department's programs who is issued a diploma by a local school district shall be maintained by such local school district, provided that all references to the juvenile's commitment to and treatment by the department are expunged.

(g) The special school district under the department shall have the powers, privileges, and authority exercised or capable of exercise by any other school district.

(h) The effect of this Code section shall not be to provide state funds to the special school district under the department through Part 4 of

Article 6 of Chapter 2 of Title 20. (Code 1981, § 49-4A-12, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, §§ 1, 3.)

Administrative rules and regulations. — Transfer of student records, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Regional Educational Services, § 160-5-1-14.

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for providing education. — When a student is committed to the department, the educational agency responsible for providing a free and appropriate public education under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is either the department or the local school district in which the student resides. 1995 Op. Att’y Gen. No. 95-6.

Eligibility of department to receive tuition grants. — Department is eligible to receive tuition grants for disabled students whose federal Individualized Education Programs (20 U.S.C. § 1400 et seq.) place those students in private residential programs for educational reasons. 1995 Op. Att’y Gen. No. 95-6.

49-4A-13. Family attention home; assessment of risk and plan of care.

As used in this Code section, the term “family attention home” means a private family home that has contracted with the Department of Juvenile Justice to provide 24 hour, short-term care for youth in the custody of the department and placed by the department in the home. Said youth are either awaiting a juvenile court hearing or have been temporarily removed from their homes for other reasons. Prior to a youth being placed in a private family attention home, an assessment of the youth’s risk to the public will be completed by the department, and based on that assessment a plan of care for each youth will be developed within 72 hours after placement. This plan shall detail the youth’s need for adult supervision, the youth’s need for structured after-school activities, the need for electronic monitoring, if appropriate, and any other additional treatment needs while the youth is in the home. This plan of care shall be developed and implemented to ensure the safety of the children and youth in each private family attention home and the residents of the communities in which the private family attention homes are located. (Code 1981, § 49-4A-13, enacted by Ga. L. 1994, p. 495, § 1; Ga. L. 1997, p. 1453, § 1.)

49-4A-14. Compensation for damage to apparel by youth under custody.

(a) As used in this Code section, the term “apparel” includes eyeglasses, hearing aids, clothing, and similar items worn on the person of the employee.

(b) When action by a youth under the control and custody of the department results in damage to an item of apparel, the department shall compensate the employee for the loss in the amount of either the repair cost, the replacement value, or the actual cost of the item of wearing apparel, whichever is less. Such loss shall be compensated only in accordance with procedures to be established by the department, and no compensation shall be made by the department in excess of \$500.00 per incident. (Code 1981, § 49-4A-14, enacted by Ga. L. 1997, p. 563, § 1.)

49-4A-15. Guard lines.

Guard lines shall be established by the commissioner or his or her designated representative in charge at the various juvenile detention centers and youth development centers in the same manner that land lines are established, except that, at each corner of the lines, signs must be used on which shall be plainly stamped or written: "Guard line of _____." Signs shall also be placed at all entrances and exits for vehicles and pedestrians at the institutions and at such intervals along the guard lines as will reasonably place all persons approaching the guard lines on notice of the location of the institutions. (Code 1981, § 49-4A-15, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

Editor's notes. — Ga. L. 2012, p. 1339,

49-4A-16. (For effective date, see note.) Unlawful crossing or passage of certain items across guard lines; penalty.

(a) As used in this Code section, the term "guard lines" means the lines established pursuant to Code Section 49-4A-15.

(b) It shall be unlawful for any person to cause to be introduced across guard lines or to come inside such guard lines with:

(1) A gun, pistol, knife, or any other weapon or a bullet, ammunition, or explosive device; or

(2) Any intoxicating liquor, amphetamines, marijuana, or any other hallucinogenic or other drugs.

(c) (For effective date, see note.) The provisions of this Code section shall not apply when the commissioner or director of the juvenile detention facility has provided authorization for the introduction of the items listed in subsection (b) of this Code section into such facility.

(d) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment

for not less than one year nor more than four years. (Code 1981, § 49-4A-16, enacted by Ga. L. 2012, p. 1339, § 2/SB 366; Ga. L. 2013, p. 294, § 3-12/HB 242.)

Delayed effective date. — Subsection (c), as set out above, becomes effective January 1, 2014. For version of subsection (c) in effect until January 1, 2014, see the 2013 amendment note.

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

The 2013 amendment, effective January 1, 2014, in subsection (c), substituted "detention facility" for "detention center or youth development center" near the middle, and substituted "facility" for "center" at the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339, § 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

49-4A-17. (For effective date, see note.) Introduction of certain items into juvenile detention facility prohibited; commerce with incarcerated youth.

(a)(1) Without the knowledge and consent of the commissioner or the director in charge of any juvenile detention facility, it shall be unlawful for any person to take into or cause to be introduced into such facility any item which such person has been directed not to take into such center:

- (A) Verbally by a staff member of such facility;
- (B) In writing by a staff member of such facility; or
- (C) As directed by the rules, regulations, or policies of such facility.

(2) Any item taken into a facility in violation of this subsection shall be deemed contraband and shall be subject to being confiscated and retained as property of the department.

(3) Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years.

(b) It shall be unlawful for any person to trade or traffic with, buy from, or sell any article to a child assigned to a juvenile detention facility without the knowledge and consent of the commissioner or the

director in charge of such facility. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years. (Code 1981, § 49-4A-17, enacted by Ga. L. 2012, p. 1339, § 2/SB 366; Ga. L. 2013, p. 294, § 3-13/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

The 2013 amendment, effective January 1, 2014, substituted "facility" for "center" throughout this Code section; substituted "detention facility" for "detention center or youth development center" in paragraph (a)(1) and subsection (b); and, in subsection (b), substituted "child" for "youth" in the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339, § 3/SB 366, not codified by the General Assembly, provides, in part, that this Code

section shall apply to offenses committed on or after July 1, 2012.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

49-4A-18. Prohibited possession of certain goods by youth.

(a) As used in this Code section, the term:

(1) "Director" means the commissioner or any director of a juvenile detention center or his or her designee, or any other person who is responsible for the overall management and operation of a center.

(2) "Juvenile detention center" means a regional youth detention center or youth development center operated by or on behalf of the department.

(3) "Telecommunications device" means a device, an apparatus associated with a device, or a component of a device that enables, or may be used to enable, communication with a person outside a place of incarceration, including, but not limited to, a telephone, cellular telephone, personal digital assistant, transmitting radio, or computer connected or capable of being connected to a computer network, by wireless or other technology, or otherwise capable of communicating with a person or device outside of a place of incarceration.

(4) "Youth" means an offender assigned to a juvenile detention center.

(b) Without the authorization of the director, it shall be unlawful for any person to obtain for, to procure for, or to give to a youth a gun,

pistol, knife, or any other weapon; a bullet, ammunition, or any other explosive device; tobacco products; intoxicating liquor; marijuana, amphetamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; any telecommunications device; or any other article or item.

(c) Without the authorization of the director, it shall be unlawful for a youth to possess a gun, pistol, knife, or any other weapon; a bullet, ammunition, or any other explosive device; tobacco products; intoxicating liquor; marijuana, amphetamines, or any other hallucinogenic drugs or other drugs, regardless of the amount; any telecommunications device; or any other article or item.

(d) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than four years. (Code 1981, § 49-4A-18, enacted by Ga. L. 2012, p. 1339, § 2/SB 366.)

Effective date. — This Code section became effective July 1, 2012. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 1339,

§ 3/SB 366, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses committed on or after July 1, 2012.

CHAPTER 5

PROGRAMS AND PROTECTION FOR CHILDREN AND YOUTH

Article 1		Sec.	
Children and Youth Services			
Sec.		49-5-12.1.	dards; revocation or refusal of license; penalties; violations.
49-5-1.	Short title.		Penalties for violation of child welfare agency laws and regulations.
49-5-2.	Purpose of article.	49-5-13.	Private child care learning centers not required to meet federal adult-child ratio.
49-5-3.	(For effective date, see note.) Definitions.	49-5-14.	Fire inspections of day-care homes and centers; fire safety codes [Repealed].
49-5-4.	Other state departments, agencies, officers, and employees to assist department.	49-5-15.	Notice as to child brought into state for placement or adoption; bond; certificate as to foster home; reports.
49-5-5.	Powers and duties of board; rules and regulations for training schools and other facilities.	49-5-16.	Power of department to contract; acceptance of children from federal courts for compensation.
49-5-6.	Merit system to conform to federal standards; power to employ and contract for professional services; employment and dismissal procedures; membership in state retirement system.	49-5-17.	Power of department to accept and use gifts.
49-5-7.	Development and administration of public child welfare and youth services.	49-5-18.	Instituting or intervening in legal proceedings.
49-5-8.	(For effective date, see note.) Powers and duties of department.	49-5-19.	Annual report on children and youth services.
49-5-9.	Use of public and private institutions and agencies; inspections; examination and control of children not in department's facilities.	49-5-20.	Existing charters of charitable institutions.
49-5-10.	Commitment of delinquent or unruly children to department; procedures; handling and treatment; escape and apprehension; release; termination of control [Repealed].	49-5-21.	Penalties for aiding, harboring, or encouraging escapees or hindering their apprehension.
49-5-10.1.	Temporary transfer of at-risk unruly or delinquent children to Department of Corrections; procedure; review; discharge [Repealed].	49-5-22.	Voluntary pre-kindergarten programs to provide toilet facilities screened for privacy.
49-5-11.	Escape from a youth detention center [Repealed].	49-5-23.	Obtaining information on recall notices.
49-5-12.	Licensing and inspection of child welfare agencies; stan-		
Article 2			
Child Abuse and Deprivation Records			
		49-5-40.	Definitions; confidentiality of records; restricted access to records.
		49-5-41.	(For effective date, see note.) Persons and agencies permitted access to records.

- Sec.
 49-5-41.1. Inspection and retention of records of juvenile drug use.
 49-5-42. Rules and regulations.
 49-5-43. Article not to conflict with federal law or lose federal funds; duty of board.
 49-5-44. Penalties for unauthorized access to records; use of records in public and criminal proceedings.
 49-5-45. Penalty for allowing unauthorized access to juvenile drug use records.
 49-5-46. Liability of department or agency.

Article 3

Employees' Records Checks for Day-care Centers

- 49-5-60. (For effective date, see note.) Definitions.
 49-5-61. Requirement of separate license and separate director for each new facility.
 49-5-62. Records check application for director of new facility; preliminary records check for employees.
 49-5-63. Notice of determination; issue of license; effect of unsatisfactory determination.
 49-5-64. Fingerprint records check.
 49-5-65. Determination on the basis of fingerprint records check; revocation of license.
 49-5-65.1. Employment of persons who have entered plea of guilty or nolo contendere to specified offenses [Repealed].
 49-5-66. Separate license and center.
 49-5-67. Fingerprint records check application for director of existing facility; preliminary records check for employees; annual license.
 49-5-68. Change of director.
 49-5-69. Employment requirements; suspension or revocation of license or criminal penalty for violations.
 49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; viola-

- Sec.
 49-5-70. tions; foster parents known to have criminal records.
 Required cooperation among state agencies; unauthorized use of criminal history record information.
 49-5-71. Immunity from liability for centers, state agencies, and employees.
 49-5-72. Supplemental nature of article's requirements.
 49-5-73. Applicability of "Georgia Administrative Procedure Act"; consideration of matters in mitigation of conviction.
 49-5-74. Administration of article.

Article 4

Emergency Protection of Children in Certain Institutions

- 49-5-90. Definitions.
 49-5-91. Emergency orders; corrective orders; monitors.
 49-5-92. Preliminary hearing; department order; interim department actions.

Article 5

Records Checks for Persons Supervising Children

- 49-5-110. (For effective date, see note.) Definitions.
 49-5-111. Employers authorized to make records checks; procedure.
 49-5-112. Cooperation of law enforcement agencies; penalty for false information.
 49-5-113. Personal liability; disciplinary action.
 49-5-114. Other laws requiring records checks.

Article 6

Programs and Protection for Children

PART 1

GOVERNOR'S OFFICE FOR CHILDREN AND FAMILIES

- 49-5-130. Legislative findings and intent.

- Sec.
- 49-5-131. (For effective date, see note.)
Definitions.
- 49-5-132. Governor’s Office for Children and Families established; funding; duties and responsibilities.
- 49-5-133. Executive director; cooperation with Office of the Child Advocate for the Protection of Children.
- 49-5-134. Advisory board established; membership; officers and committees; compensation.
- 49-5-135. Powers and duties of advisory board; disbursement of appropriated moneys from fund.

PART 2

DELINQUENCY PREVENTION AND COMMUNITY
BASED SERVICES

- 49-5-150. Legislative policy and intent.
- 49-5-151. Implementation of part.
- 49-5-152. Purchase of care or services from public or private agencies.
- 49-5-153. Annual report.
- 49-5-154. (For effective date, see note.)
Study of youth needs.
- 49-5-155. Effect of article on Department of Juvenile Justice; office as recipient entity for federal grants.

PART 3

MENTORING ACT OF 2000

- 49-5-156. Short title; legislative findings; development of program; awarding of grants; applications; recognition; reporting to General Assembly.

Article 7

Registration of Organizations
Providing Services to Runaway and
Homeless Youth

- 49-5-160. Definitions; qualifications.
- 49-5-161. Registration and form required; fee; issuance of certificate.
- 49-5-162. Policies; qualified staff; proof of liability coverage.

- Sec.
- 49-5-163. Display of registration; inspection of facilities; investigation.
- 49-5-164. Registered organization not exempt.

Article 8

Central Child Abuse Registry

- 49-5-180. Definitions.
- 49-5-181. Establishment of central registry.
- 49-5-182. Purpose of abuse registry.
- 49-5-183. Reporting of abuse cases to DFACS office.
- 49-5-183.1. Notice to alleged child abuser of classification; procedures; notification to division; children under 16 years of age not required to testify.
- 49-5-184. Information to be included in abuse registry; hearing on expungement of name from registry; order; appeal.
- 49-5-185. Access to information in registry.
- 49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.
- 49-5-187. Immunity from civil or criminal liability.

Article 9

Family Preservation and Child
Protection

- 49-5-200 through 49-5-209 [Repealed].

Article 10

Children and Adolescents with
Severe Emotional Problems

- 49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.
- 49-5-221. Definitions.
- 49-5-222. Guiding principles for coordinated system of care.
- 49-5-223. Contents of plan; information to be collected; updating of plan; implementation date.

Sec.

- 49-5-224. Commissioner of behavioral health and developmental disabilities to submit annual report; contents of report.
- 49-5-225. Local interagency committees; membership; function of committees.
- 49-5-226. Placement of children and adolescents out of state for treatment.
- 49-5-227. Governor's Office for Children and Families to comment on plan for Coordinated System of Care and provide recommendations.

Article 11

Child Care Council

- 49-5-240 through 49-5-244 [Redesignated].

Article 12

Policy Council for Children and Families

- 49-5-250 through 49-5-264 [Repealed].

Article 13

PeachCare for Kids

Sec.

- 49-5-270. Short title.
- 49-5-271. Legislative findings.
- 49-5-272. Definitions.
- 49-5-273. Creation of PeachCare; availability; eligibility; payment of premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.

Article 14

Foster Parents Bill of Rights

- 49-5-280. Short title.
- 49-5-281. (For effective date, see note.) Bill of rights for foster parents; filing of grievance in event of violations.

Cross references. — Juvenile justice system, T. 15, C. 11.

Editor's notes. — By resolution (Ga. L. 1986, p. 1204), the General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.

Administrative rules and regula-

tions. — Bright from the Start, Georgia Department of Early Care and Learning, Official Compilation of the Rules and Regulations of the State of Georgia, Title 591.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

For case comment, "Taylor v. Ledbetter: Vindicating the Constitutional Rights of Foster Children to Adequate Care and Protection," see 22 Ga. L. Rev. 1187 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Construction. — Ga. L. 1963, p. 81 et seq. and Ga. L. 1971, p. 709 et seq. (see O.C.G.A. Ch. 5, T. 49 and Ch. 11, T. 15)

should be read in pari materia. 1980 Op. Att'y Gen. No. 80-53.

RESEARCH REFERENCES

ALR. — Tort liability of public authority for failure to remove parentally abused

or neglected children from parents' custody, 60 ALR4th 942.

ARTICLE 1

CHILDREN AND YOUTH SERVICES

Cross references. — Distribution of prostitution proceeds following forfeiture to programs serving child victims, § 16-6-13.3. Commencement of juvenile court proceeding for child on aftercare to Division of Youth Services, Uniform Rules

for the Juvenile Courts of Georgia, Rule 4.6. Commitment of child to Division of Youth Services by juvenile court, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.2.

49-5-1. Short title.

This article shall be known and may be cited as the “Children and Youth Act.” (Ga. L. 1963, p. 81, § 1; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “This article shall be known and may be cited as” for “The short title of this article shall be” at the beginning of this Code section.

Cross references. — Probation officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.4.

Administrative rules and regulations. — Recovery and administration of child support, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Child Support Recovery, Chapter 290-7-1.

JUDICIAL DECISIONS

Custody and control exclusively in department. — Ga. L. 1963, p. 81 et seq. and Ga. L. 1971, p. 709 et seq. (see O.C.G.A. Ch. 11, T. 15 and Ch. 5, T. 49) when construed in *pari materia*, evidence a legislative intent that, once the juvenile court judge in the exercise of judicial discretion commits a juvenile to the Division for Children and Youth (now Department of Children and Youth Services) custody and control of the juvenile is thereby and

thereafter exclusively in the division (now department). *In re R.D.*, 141 Ga. App. 843, 234 S.E.2d 680 (1977); *In re R.L.M.*, 171 Ga. App. 940, 321 S.E.2d 435 (1984).

Cited in *Brown v. Holloway*, 112 Ga. App. 539, 145 S.E.2d 600 (1965); *Carrindine v. Ricketts*, 236 Ga. 283, 223 S.E.2d 627 (1976); *In re A.S.*, 140 Ga. App. 865, 232 S.E.2d 145 (1977); *Ellis v. State*, 289 Ga. App. 452, 657 S.E.2d 562 (2008).

49-5-2. Purpose of article.

The purpose of this article is to promote, safeguard, and protect the well-being and general welfare of children and youth of this state through a comprehensive and coordinated program of public child welfare and youth services, providing for:

(1) Social services and facilities for children and youths who require care, control, protection, treatment, or rehabilitation and for the parents of such children;

(2) Setting of standards for social services and facilities for children and youths;

(3) Cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children and youth; and

(4) Promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development, and well-being of their children.

It is the further purpose of this article to provide for a qualified group of citizens and leading professionals who will identify and study the problems of youth, recommend and effect possible solutions, and work actively for state and local action to prevent children and youths from becoming inmates of our prisons, patients in our mental hospitals, and persons dependent upon public assistance programs. (Ga. L. 1963, p. 81, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Fire safety standards for day care centers. — Board of Human Resources had lawful authority to adopt the 1973 Life Safety Code (National Fire Protection Association standard 101), a comprehensive set of standards that deals with preventing and controlling losses from fire, as part of the rules and regulations for day care centers, and the Department of Human Resources has lawful authority to enforce compliance with code standards. 1976 Op. Att’y Gen. No. U76-6.

Contracting with private institution for provision of day care. — De-

partment may contract with a private institution for the purpose of providing day care and other specialized services for mentally retarded children, assign responsibility for the supervision of this contract to the Division for Children and Youth (now Department of Children and Youth Services) and use funds allocated from the Governor’s Emergency Fund for these purposes, provided that the contracts do not create a continuing obligation for the state. 1970 Op. Att’y Gen. No. 70-96.

RESEARCH REFERENCES

ALR. — Parent’s obligation to support unmarried minor child who refuses to live with parent, 98 ALR3d 334.

49-5-3. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) “Child-caring institution” means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the board.

(2) “Child-placing agency” means any institution, society, agency, or facility, whether incorporated or not, which places children in foster homes for temporary care or for adoption.

(3) “Child welfare and youth services” means duties and functions authorized or required by this article to be provided by the department with respect to:

(A) Establishment and enforcement of standards for social services and facilities for children and youths which supplement or substitute for parental care and supervision for the purpose of preventing or remedying or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children and youths;

(B) (For effective date, see note.) Protecting and caring for dependent children and youths;

(C) Protecting and promoting the welfare of children of working mothers;

(D) Providing social services to children and youths and their parents and care for children and youths born out of wedlock and their mothers;

(E) Promotion of coordination and cooperation among organizations, agencies, and citizen groups in community planning, organization, development, and implementation of such services; and

(F) Otherwise protecting and promoting the welfare of children and youths, including the strengthening of their homes where possible or, where needed, the provision of adequate care of children and youths away from their homes in foster family homes or day-care or other child care facilities.

(4) “Children’s transition care center” means a transition center which provides a temporary, home-like environment for medically fragile children, technology dependent children, and children with special health care needs, up to 21 years of age, who are deemed clinically stable by a physician but dependent on life-sustaining medications, treatments, and equipment and who require assistance with activities of daily living to facilitate transitions from a hospital or other facility to a home or other appropriate setting. Such centers are designated sites that provide child placing services and nursing care, clinical support services, and therapies for short-term stays of one to 14 days and for longer stays of up to 90 days to facilitate transitions of children to homes or other appropriate settings. Extended stays of up to 12 months may be approved by the department by waiver.

(5) (For effective date, see note.) “Dependent child or youth” means any person so adjudged under Chapter 11 of Title 15.

(6) Reserved.

(7) Reserved.

(8) Reserved.

(9) “Group-care facility” means a place providing care for groups of children and youths, other than a foster family home.

(9.1) Reserved.

(10) “Homemaker service” means a service provided by a woman selected for her skills in the care of children and home management and placed in a home to help maintain and preserve the family life during the absence or incapacity of the mother.

(11) “In loco parentis” means a quasi-parental relationship inferred from and implied by the fact that a child or youth has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.

(12) (For effective date, see note.) “Legal custody” means a legal status created by court order embodying the following rights and responsibilities:

(A) The right to have the physical possession of the child;

(B) The right and the duty to protect, train, and discipline the child;

(C) The responsibility to provide the child with food, clothing, shelter, education, and ordinary medical care; and

(D) The right to determine where and with whom the child shall live,

provided that these rights and responsibilities shall be exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. These rights shall be subject to judicial oversight and review pursuant to Code Section 15-11-212.

(13) “Maintenance” means all general expenses for care such as board; shelter; clothing; medical, dental, and hospital care; transportation; and other necessary or incidental expenses.

(14) “Maternity home” means any place in which any person, society, agency, corporation, or facility receives, treats, or cares for, within any six-month period, more than one pregnant woman whose child is to be born out of wedlock, either before, during, or within two

weeks after childbirth. This definition shall not include women who receive maternity care in the home of a relative or in general or special hospitals, licensed according to law, in which maternity treatment and care is part of the medical services performed and the care of children is only brief and incidental.

(15) “Probation” means a legal status created by court order following adjudication in a delinquency case, whereby a child or youth is permitted to remain in the community, subject to supervision by the court or an agency designated by the court and subject to being returned to court at any time during the period of probation.

(16) (For effective date, see note.) “Protective supervision” means a legal status created by court order following adjudication in a dependency case, whereby a child’s place of abode is not changed but assistance directed at correcting the dependency is provided through the court or an agency designated by the court.

(17) “Shelter” or “shelter care” means temporary care in a non-security or open type of facility. (Ga. L. 1963, p. 81, § 3; Ga. L. 1982, p. 706, §§ 2, 6-8; Ga. L. 1988, p. 1720, § 16; Ga. L. 1991, p. 408, § 1; Ga. L. 1992, p. 1983, § 25; Ga. L. 1994, p. 97, § 49; Ga. L. 2004, p. 645, § 7; Ga. L. 2007, p. 590, § 3/HB 153; Ga. L. 2008, p. 1145, § 1/HB 984; Ga. L. 2013, p. 294, § 4-54/HB 242.)

Delayed effective date. — Subparagraph (3)(B), paragraph (5), paragraph (12), and paragraph (16), as set out above, become effective January 1, 2014. For version of subparagraph (3)(B), paragraph (5), paragraph (12), and paragraph (16) in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, substituted “dependent children” for “deprived children” in subparagraph (3)(B); substituted “‘Dependent child or youth’” for “‘Deprived child or youth’” in paragraph (5); substituted “Code Section 15-11-212” for “Code Section 15-11-55” in the last sentence of paragraph (12); and substituted “dependency” for “deprivation” twice in paragraph (16). See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a hyphen

was deleted from the phrase “child care” in subparagraph (3)(F).

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

JUDICIAL DECISIONS

“Legal custody.” — Visitation rights of a parent of a child in the custody of the Department of Family and Children Ser-

vices are a residual “parental tie” which is not severed by the mere placement of the child in the temporary custody of the

department without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988).

Once temporary legal custody of a child was placed in the department under a shelter care order, the sole right to determine where and with whom the child would live vested with the department; the direction of the trial court to remove the child from the father's home was not binding, and the trial court's later contempt finding based on this order was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006).

Impact of 2003 amendment to O.C.G.A. § 15-11-55. — Juvenile court erred in awarding legal custody of two children to the Department of Family and Children Services (DFACS) and then ordering that physical custody be given to the maternal grandparents as: (1) once legal custody of a deprived child has been granted to DFACS, the juvenile court cannot dictate physical custody; (2) nothing in O.C.G.A. § 15-11-55(a)(2) allowed any redefinition of legal custody as defined in O.C.G.A. § 49-5-3(12); (3) using the rules of construction, § 15-11-55(a)(2) followed the statutory and legal precedent that the grant of legal custody to DFACS included the right to determine physical custody; and (4) the 2003 amendment to § 15-11-55 did not reject the statutory definition of legal custody. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006).

Nothing in O.C.G.A. § 15-11-55(a)(2) allows any redefinition of legal custody as defined in O.C.G.A. § 49-5-3(12). Instead, § 15-11-55(a)(2) follows the statutory and legal precedent that the grant of legal custody to the Department of Family and

Children Services includes the right to determine physical custody; the 2003 amendment to § 15-11-55 does not reject the statutory definition of legal custody. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006).

Joint legal and physical custody. — Juvenile court exceeded the court's authority when the court awarded joint legal and physical custody of a deprived child jointly with the Department of Human Resources (DHR) and unrelated third parties when the DHR objected to such arrangement. In re J.N.T., 212 Ga. App. 498, 441 S.E.2d 918 (1994).

Authority to determine physical placement of children. — Trial court erred in ordering the Department of Family and Children's Services (DFACS) to remove a foster child from the care of the child's foster parent because the order improperly infringed upon the authority of DFACS to determine the physical placement of children within the department's custody; DFACS had legal custody of the child since the child was born, and DFACS, as legal custodian, stood in loco parentis and had all legal rights of a natural parent, including the benefit of a prima facie right to custody. In re Goudeau, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

Cited in Frances Wood Wilson Found., Inc. v. Bell, 223 Ga. 588, 157 S.E.2d 287 (1967); In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977); W.F. v. State, 144 Ga. App. 523, 241 S.E.2d 631 (1978); In re M.A.F., 254 Ga. 748, 334 S.E.2d 668 (1985); Brown v. Phillips, 178 Ga. App. 316, 342 S.E.2d 786 (1986); Ledford v. State Farm Mut. Auto. Ins. Co., 189 Ga. App. 866, 377 S.E.2d 693 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 20 et seq. 79 Am. Jur. 2d, Welfare Laws, §§ 19, 20.

C.J.S. — 43 C.J.S., Infants, § 15.

49-5-4. Other state departments, agencies, officers, and employees to assist department.

It shall be the duty of all other state departments, agencies, officers, and employees to assure the most effective coordination and use of state

resources, personnel, and facilities for the benefit of children and youths and to assist the Department of Human Services in effectuating the purposes of this article by making available to the department, upon request of the board or the commissioner and to the extent permissible by law, the services, resources, personnel, and facilities of their respective departments and agencies. (Ga. L. 1963, p. 81, § 4; Ga. L. 1982, p. 3, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

JUDICIAL DECISIONS

Cited in *A.C.G. v. State*, 131 Ga. App. 156, 205 S.E.2d 435 (1974); *In re R.D.*, 141 Ga. App. 843, 234 S.E.2d 680 (1977).

49-5-5. Powers and duties of board; rules and regulations for training schools and other facilities.

(a) The board shall perform duties required of it by this article and shall, in addition thereto, be responsible for adoption of all policies and promulgation of all rules and regulations not in conflict with this article that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this article, and to the performance of the duties and functions of the department as set forth in this article.

(b) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this article and to restore and build up the self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Ga. L. 1963, p. 81, § 6.)

JUDICIAL DECISIONS

Cited in *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Authority over training schools, institutions, and detention centers. — Based upon the fact that O.C.G.A. § 49-5-5 expressly extends the rule-making power of the Board of Human Resources not only to the operation and

maintenance of training schools but also to any facility or institution under the jurisdiction and control of the Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources), the admission

procedures and policies pertaining to regional detention centers are likewise within the discretion of the department. 1971 Op. Att'y Gen. No. 71-161.

Acceptance of children from federal institutions and provision of services. — State Department of Family and Children Services (now Division of Family and Children Services of the Department of Human Resources) is authorized to enter into agreements to accept children and youth from the federal penal and corrective institutions and agencies and to provide the children and youth with the services extended by the facilities of the department to those children taken pursuant to Georgia court orders; the conditions and circumstances under which such agreements should be effectuated is a matter within the administrative powers of the board pursuant to this section and can be effectuated by the adoption of such appropriate rules and regulations as the board deems necessary. Adequate compensation for the costs thereof may be collected by the department from the agency transferring the children or youth to the Georgia facilities. 1968 Op. Att'y Gen. No. 68-191.

Fire safety standards for day care centers. — Board of Human Resources had lawful authority to adopt the 1973 Life Safety Code (National Fire Protection Association standard 101), a comprehensive

set of standards that deals with preventing and controlling losses from fire, as part of the rules and regulations for day care centers, and the department has lawful authority to enforce compliance with code standards. 1976 Op. Att'y Gen. No. U76-6.

Formula for determining allocation of funds to counties. — State Board for Children and Youth (now Board of Human Resources) has the authority to provide a formula for determining the funds to be allocated and distributed to the counties. 1968 Op. Att'y Gen. No. 68-419.

Limits on amount spent by counties for detention purposes. — State Board for Children and Youth (now Board of Human Resources) has the power to incorporate in a formula a provision that the funds disbursed for county-owned detention purposes will not exceed the total funds spent by the various counties for detention purposes during the fiscal year involved. 1968 Op. Att'y Gen. No. 68-419.

Imposition of limits on spending based on amount spent in preceding year. — State Board for Children and Youth (now Board of Human Resources) does not have the authority to provide in a formula that the funds allocated and distributed to a county in one fiscal year will not be in excess of the total funds spent by the county for detention purposes during the preceding year. 1968 Op. Att'y Gen. No. 68-419.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 12, 13.

49-5-6. Merit system to conform to federal standards; power to employ and contract for professional services; employment and dismissal procedures; membership in state retirement system.

(a) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(b) The department is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees

as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(c) Superintendents of training schools and other facilities and institutions now or hereafter under the jurisdiction and control of the department shall be employed and dismissed for cause by the board on the recommendation of the commissioner. Professional personnel and other employees of such training schools, facilities, and institutions shall be employed and dismissed for cause by the commissioner on the recommendation of the superintendent. All other professional personnel and all other employees of the department under this article shall be employed and dismissed for cause by the commissioner in accordance with such rules and regulations as may be promulgated by the board in regard thereto. Employees of the department under this article shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(d) All personnel of the Division of Family and Children Services are authorized to be members of the Employees' Retirement System of Georgia, Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this article to the division, or otherwise had by persons at the time of employment with the division, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the division. (Ga. L. 1963, p. 81, § 8; Ga. L. 1992, p. 1983, § 26; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-98/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" at the end of subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

49-5-7. Development and administration of public child welfare and youth services.

(a) The department is designated the exclusive state agency:

(1) For development and administration of a comprehensive state plan and program providing public child welfare and youth services provided for in Title IV, Part B, of the federal Social Security Act;

(2) For administering, supervising, and discharging all duties required by any other act of Congress and any amendments thereto that may now or hereafter allot federal funds for public child welfare and youth services coming within the scope of this article;

(3) For administering and supervising local administration of public child welfare and youth services provided for in this article; and

(4) For receiving and expending on behalf of the state all funds which now or hereafter may become available or allotted to this state by virtue of any appropriation or act of Congress or regulation of the federal government, its agencies, and instrumentalities or be appropriated by the General Assembly for public child welfare and youth services to be administered by the department as provided for in this article. The department is authorized to use so much of funds as may be appropriated by the General Assembly for the purpose of matching federal grants for public child welfare and youth services provided for in this article as may be necessary to secure such grants, derive full advantage to the state of benefits contemplated under the terms of such grants, and comply with the terms of such grants.

(b) County or district departments are designated the local public agencies to administer locally the state plan and program for public child welfare and youth services to be developed in accordance with paragraph (1) of subsection (a) of this Code section and other public child welfare and youth services provided for in this article and shall administer them in accordance with rules and regulations to be established by the board. The department shall aid, assist, supervise, coordinate, and direct the administering of such public child welfare and youth services by county or district departments and enforce the rules and regulations of the board in regard thereto.

(c) The cost of all child welfare benefits and services and the cost of administration thereof, authorized by this article, shall be met from such funds as shall be made available therefor from federal and state appropriations. No county shall hereafter be required to participate in the cost of any child welfare benefit or service or in the cost of administration thereof. For the purpose of this subsection, "cost of administration" means salaries and traveling expenses of the county or district director and other employees of the staff of the county or district department engaged in the performance of child welfare and youth services provided for under this article.

(d) Public child welfare and youth services similar to those to be provided by the department under this article and pursuant to Title IV, Part B, of the federal Social Security Act shall, by cooperative agreement or contract by and between the Department of Human Services

and county or district departments of family and children services be made available to recipients of and persons who have been or are likely to become recipients of assistance under the temporary assistance for needy families program provided for in Article 5 of Chapter 4 of this title and related federal laws, to include foster home care and other child care referred to in Section 408 of Title IV of the federal Social Security Act. The department is designated the “state public welfare agency” referred to in Sections 408(a) and (f) and 421 of Title IV of the federal Social Security Act.

(e) The commissioner shall, in developing and administering the state plans and programs referred to in paragraph (1) of subsection (a) and in subsection (d) of this Code section, provide by cooperative agreement and contract where necessary for coordination of such plans and programs with a view toward providing welfare and related services on a comprehensive basis that will best promote the welfare of children and youths and their families and best effectuate and coordinate effective implementation and administration of both such plans and programs at the local level of administration.

(f) Nothing in this article is intended to conflict with any federal law or result in loss of eligibility of the department or any other department of state government to any federal funds. In case such a conflict or loss of federal funds should occur by virtue of enactment of any portion of this article, then such portion of this article in conflict with such federal law or otherwise causing loss of such funds is declared to be of no effect and void. The board is authorized and empowered in such event to take such action as may be necessary and to effect such changes within the department as may be necessary to prevent loss of such funds to the department or any other department of state government affected and to secure to the same the full benefit of the federal laws. (Ga. L. 1963, p. 81, § 9; Ga. L. 1969, p. 996, §§ 1, 3; Ga. L. 1970, p. 451, § 3; Ga. L. 1972, p. 1251, § 1; Ga. L. 1973, p. 563, § 1; Ga. L. 1974, p. 1455, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 277, § 2; Ga. L. 1987, p. 3, § 49; Ga. L. 1992, p. 1983, § 27; Ga. L. 1993, p. 91, § 49; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title IV, Part B of the federal Social Security Act, referred to in paragraph (a)(1) and subsection (d) of this Code section, is codified at 42 U.S.C. §§ 620 through 626. Sections 408 and 421 of Title IV of the federal Social Security Act, referred to in subsection (d) of this Code section, are codified at 42 U.S.C. §§ 608 and 621, respectively.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969). For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Applicability of section to convicted felons under 18. — This section was not intended to exclude probationary sentences for convicted felons under 18 years of age. *Lockett v. State*, 143 Ga. App. 629, 239 S.E.2d 238 (1977).

Department of Human Resources (now Children and Youth Services) loses the right to custody at age 17, when a juvenile is convicted of a felony in

the superior court. *W.F. v. State*, 144 Ga. App. 523, 241 S.E.2d 631 (1978).

Cited in *Mathis v. State*, 231 Ga. 401, 202 S.E.2d 73 (1973); *Brown v. State*, 235 Ga. 353, 219 S.E.2d 419 (1975); *Carrindine v. Ricketts*, 236 Ga. 283, 223 S.E.2d 627 (1976); *Allen v. Ricketts*, 236 Ga. 294, 223 S.E.2d 633 (1976); *In re R.D.*, 141 Ga. App. 843, 234 S.E.2d 680 (1977).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

COURT JURISDICTION AND RESPONSIBILITIES

DEPARTMENT'S CUSTODY AND RESPONSIBILITIES

PAROLE ELIGIBILITY

LOSS OF CIVIL RIGHTS

General Consideration

Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1, 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L. 1963, p. 81, §§ 9 and 24 (see O.C.G.A. §§ 49-2-6 and 49-5-7 et seq.) must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

Effect on power of superior court. — Ga. L. 1972, p. 1251, § 11 (see O.C.G.A. § 49-5-7) sets apart a defined class of offenders and directs how those offenders shall be punished for the offense; in doing this, the power of any superior court to try an individual under the age of 17 for any given crime is in no way affected; that section is like, in this respect, Ga. L. 1972, p. 582, § 1 (see O.C.G.A. § 42-5-51) which provides that the commissioner of corrections and not the sentencing court designates the place of confinement of any individual within the court's jurisdiction.

1972 Op. Att'y Gen. No. 72-3.

Legislature dictates manner in which youthful convicts will be punished. — This section treats individuals who have already been convicted by a court of a particular crime and concerns only the manner in which these particular convicts shall be punished; as to the particular punishment which may be imposed following conviction of a crime, the matter is not within the province of the judiciary, rather the legislature has exclusive jurisdiction in the matter of dictating how crimes shall be punished. 1972 Op. Att'y Gen. No. 72-3.

Parole power of State Board of Pardons and Paroles. — Within the one-year period from the original date of commitment, the trial court has the authority, under former subparagraph (a)(5)(B) of this section, to modify the court's original sentence, but the State Board of Pardons and Paroles also has the authority, subject to the board's own guidelines, to parole persons incarcerated pursuant to former subparagraph (a)(5)(A) of this section. 1980 Op. Att'y Gen. No. 80-142.

State Board of Pardons and Paroles need not have the concurrence and recommendation of the director of the Division for Children and Youth before the board can consider persons incarcerated under

former subparagraph (a)(5)(A) of this section for parole. 1980 Op. Att'y Gen. No. 80-142.

Word "parole" in former subparagraph (a)(5)(B) of this section does not relate to performance by State Board of Pardons and Paroles of the board's duties but rather relates to the modification of the sentence by the committing court so as to "release or parole" those persons incarcerated pursuant to former subparagraph (a)(5)(A) of this section. 1980 Op. Att'y Gen. No. 80-142.

Court Jurisdiction and Responsibilities

Except in the case of capital crimes, juvenile courts generally have exclusive, original jurisdiction of children and may not transfer those children to other courts for criminal proceedings unless the child is 15 or older; a person will not come to the Department of Offender Rehabilitation (now Department of Corrections) under the exceptions of former subparagraph (a)(5)(A) of this section, unless the person is less than 17, and unless the person is at least 13 in the case of a capital crime or is at least 15 in the case of other crimes. 1974 Op. Att'y Gen. No. 74-88.

Commitment to the Department of Offender Rehabilitation (now Department of Corrections) is mandatory if the child is convicted of a capital crime under Ga. L. 1974, p. 1455, § 1 (see O.C.G.A. § 49-5-7); it is a discretionary decision for the court in the other two situations under which Ga. L. 1974, p. 1455, § 1 (see O.C.G.A. §§ 49-5-7 and former 49-5-11) authorize commitment to the department. 1974 Op. Att'y Gen. No. 74-88.

Determination of previous adjudications required under section is judicial function. — Different ages referred to in former subparagraph (a)(5)(A) of Ga. L. 1973, p. 563, § 1 and Ga. L. 1971, p. 709, § 1 (see O.C.G.A. §§ 49-5-7 and 15-11-39) are not in conflict with one another, and the determination of previous adjudications required in one aspect of former subparagraph (a)(5)(A) is a judicial function rather than an administrative function. 1974 Op. Att'y Gen. No. 74-88.

Department should notify committing court of court's responsibility for one-year case review. — Primary responsibility for a one-year case review under this section rests with the committing court; as a practical matter, the Division for Children and Youth (now Department of Children and Youth Services) should notify the committing court of this responsibility. 1970 Op. Att'y Gen. No. 70-65.

Department's Custody and Responsibilities

Custody provision not unconstitutional. — Former provision in this section providing for the custody of convicted misdemeanants and felons under the age of 17 was not unconstitutional. 1972 Op. Att'y Gen. No. 72-3.

Exclusive state agency for acceptance and incarceration of misdemeanants and noncapital felons under age 17. — As a general rule, the legislature has designated the Board of Offender Rehabilitation (now Department of Corrections) as the sole agency for the reception and assignment of all convicted misdemeanants and felons. A notable exception to this general provision provides that the Division for Children and Youth (now Department of Children and Youth Services) is designated the exclusive state agency for the acceptance and incarceration of all misdemeanants and felons under the age of 17 years; provided, however, that those felons convicted of a capital felony shall only be sentenced into the custody of the Department of Offender Rehabilitation (now Department of Corrections). 1972 Op. Att'y Gen. No. 72-3.

Responsibility for children convicted of noncapital crimes ends at age 17. — Department of Human Resources' (now Department of Children and Youth Services') legal responsibility for children under the age of 17 who have been convicted of noncapital crimes ends when the children reach the age of 17 at which time the children must either be released or transferred to the Department of Offender Rehabilitation (now Department of Corrections) in accordance with

Department's Custody and Responsibilities (Cont'd)

the court's order. 1974 Op. Att'y Gen. No. 74-139.

Notification of sentencing court prior to child's seventeenth birthday. — Even if the child is committed to the Department of Human Resources (now Department of Children and Youth Services) before the child's seventeenth birthday, the department cannot confine the child beyond that date and the department's legal responsibility for the child terminates on that day; prior to a committed child's seventeenth birthday the department should notify the sentencing court that a further disposition or a release must be made. 1974 Op. Att'y Gen. No. 74-139.

Transfer of youth to Department of Corrections. — A 16-year old originally committed to the department may be transferred on the child's seventeenth birthday to the Department of Offender Rehabilitation (now Department of Corrections) by order of the committing court under the provisions of Ga. L. 1972, p. 592, § 1 (see O.C.G.A. Ch. 7, T. 42); the offender's term of custody should be computed from the date of original conviction. 1975 Op. Att'y Gen. No. 75-47.

Effect of criminal sentence imposed subsequent to unexpired commitment order. — Department of Offender Rehabilitation (now Department of Corrections) properly has custody of an individual under provisions of criminal sentence which was imposed subsequent to unexpired order of commitment; at the expiration of the criminal sentence, alternative arrangements for custody should be made for the remainder of the term of commitment. 1975 Op. Att'y Gen. No. 75-20.

Crimes by children punishable by life imprisonment or death. — Kidnapping, not being punishable by death or imprisonment for life, is not an offense which requires the offender under 17 years of age to be placed in the sole custody of the Department of Offender Rehabilitation (now Department of Corrections); when the offender under 17 years of age is convicted of kidnapping for

ransom or kidnapping in which the victim receives bodily injury, both being offenses punishable by life imprisonment or death, the offender shall be sentenced only into the custody of the Department of Offender Rehabilitation (now Department of Corrections). 1975 Op. Att'y Gen. No. 75-73.

Parole Eligibility

Youth's sentence begins to run when placed under custody of department. — When custody of a felon 16 years of age is transferred by court order from the department to the Department of Offender Rehabilitation (now Department of Corrections), the sentence begins to run when the youth is placed under the custody of the Department of Human Resources. 1975 Op. Att'y Gen. No. 75-78.

Parole eligibility includes time spent in custody of department. — Because a sentence begins running from the time of incarceration under the department, the prisoner must serve one-third of the time to which the prisoner has been sentenced, including the time the prisoner has spent in the custody of the department before becoming eligible for parole. 1975 Op. Att'y Gen. No. 75-78.

Good-time computations should not include time spent incarcerated under department. — Time spent by a felon incarcerated under the department is not to be considered by the Board of Corrections when computing good-time allowances; rather, good-time should be computed from the date the felon is received by an institution under the board's jurisdiction. 1975 Op. Att'y Gen. No. 75-78.

Loss of Civil Rights

Child convicted of crime involving moral turpitude. — Person convicted of a crime before reaching the age of 17 loses the right to vote if convicted of a crime involving moral turpitude even though the person is committed to the department, rather than sentenced to the Board of Corrections; the right to vote and other civil and political rights, however, may be restored by the Board of Pardons and Paroles. 1975 Op. Att'y Gen. No. 75-17.

Youth loses voting right if crime committed is punishable by impris-

onment. — When a youth has not been imprisoned in a penitentiary but has been committed to the department, the constitutional disqualification of the right to

vote attaches if the crime committed is punishable by imprisonment. 1975 Op. Att’y Gen. No. 75-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 8 et seq.

C.J.S. — 43 C.J.S., Infants, § 8.

ALR. — Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 ALR3d 568.

Parent’s obligation to support unmar-

ried minor child who refuses to live with parent, 98 ALR3d 334.

Actions under 42 U.S.C.S. § 1983 for violations of Adoption Assistance and Child Welfare Act (42 U.S.C.S. §§ 620 et seq. and 670 et seq.), 93 ALR Fed. 314.

49-5-8. (For effective date, see note.) Powers and duties of department.

(a) The Department of Human Services is authorized and empowered, through its own programs and the programs of county or district departments of family and children services, to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated therefor, programs that will provide:

(1) Preventive services as follows:

(A) (For effective date, see note.) Collecting and disseminating information about the problems of children and youths and providing consultative assistance to groups, public and private, interested in developing programs and services for the prevention, control, and treatment of dependency and delinquency among the children of this state; and

(B) Research and demonstration projects designed to add to the store of information about the social and emotional problems of children and youths and improve the methods for dealing with these problems;

(2) Child welfare services as follows:

(A) (For effective date, see note.) Casework services for children and youths and for mothers bearing children out of wedlock, whether living in their own homes or elsewhere, to help overcome problems that result in dependency or delinquency;

(B) (For effective date, see note.) Protective services that will investigate complaints of abuse or abandonment of children and youths by parents, guardians, custodians, or persons serving in loco parentis and, on the basis of the findings of such investigation, offer social services to such parents, guardians, custodians, or persons serving in loco parentis in relation to the problem or bring

the situation to the attention of a law enforcement agency, an appropriate court, or another community agency;

(C) Supervising and providing required services and care involved in the interstate placement of children;

(D) Homemaker service, or payment of the cost of such service, when needed due to the absence or incapacity of the mother;

(E) Boarding care, or payment of maintenance costs, in foster family homes or in group-care facilities for children and youths who cannot be adequately cared for in their own homes;

(F) Boarding care or payment of maintenance costs for mothers bearing children out of wedlock prior to, during, and for a reasonable period after childbirth; and

(G) Day-care services for the care and protection of children whose parents are absent from the home or unable for other reasons to provide parental supervision;

(3) Services to courts, upon their request, as follows:

(A) Accepting for casework services and care all children and youths whose legal custody is vested in the department by the court;

(B) Providing shelter or custodial care for children prior to examination and study or pending court hearing;

(C) Making social studies and reports to the court with respect to children and youths as to whom petitions have been filed; and

(D) Providing casework services and care or payment of maintenance costs for children and youths who have run away from their home communities within this state, or from their home communities in this state to another state, or from their home communities in another state to this state; paying the costs of returning such runaway children and youths to their home communities; and providing such services, care, or costs for runaway children and youths as may be required under Chapter 3 of Title 39;

(4) Regional group-care facilities for the purpose of:

(A) Providing local authorities an alternative to placing any child in a common jail;

(B) Shelter care prior to examination and study or pending a hearing before juvenile court;

(C) Detention prior to examination and study or pending a hearing before juvenile court; and

(D) Study and diagnosis pending determination of treatment or a hearing before juvenile court;

(5) Facilities designed to afford specialized and diversified programs, such as forestry camps, ranches, and group residences, for the care, treatment, and training of children and youths of different ages and different emotional, mental, and physical conditions;

(6) Regulation of child-placing agencies, child-caring institutions, and maternity homes by:

(A) Establishing rules and regulations for and providing consultation on such rules and regulations for all such agencies, institutions, and homes; and

(B) Licensing and inspecting periodically all such agencies, institutions, and homes to ensure their adherence to established standards as prescribed by the department;

(7) Adoption services, as follows:

(A) Supervising the work of all child-placing agencies when funds are made available;

(B) Providing services to parents desiring to surrender children for adoption as provided for in adoption statutes;

(C) Providing care or payment of maintenance costs for mothers bearing children out of wedlock and children being considered for adoption;

(D) Inquiring into the character and reputation of persons making application for the adoption of children;

(E) Placing children for adoption;

(F) Providing financial assistance to families adopting children once the child has been placed for adoption, determined eligible for assistance, and the adoption assistance agreement has been signed prior to the finalization of the adoption by all parties. Financial assistance may only be granted for hard-to-place children with physical, mental, or emotional disabilities or with other problems for whom it is difficult to find a permanent home. Financial assistance may not exceed 100 percent of the amount that would have been paid for boarding such child in a family foster home and for special services such as medical care not available through insurance or public facilities. Such supplements shall only be available to families who could not provide for the child adequately without continued financial assistance. The department may review the supplements paid at any time but shall review them at least annually to determine the need for continued assistance;

(G) Providing payment to a licensed child-placing agency which places a child with special needs who is under the jurisdiction of the department for adoption. Payment may not exceed \$5,000.00 for each such adoption arranged by an agency. The board shall define the special needs child. One-half of such payment shall be made at the time of placement and the remaining amount shall be paid when the adoption is finalized. If the adoption disrupts prior to finalization, the state shall be reimbursed by the child-placing agency in an amount calculated on a prorated basis based on length of time the child was in the home and the services provided; and

(H) Providing payment to an agency which recruits, educates, or trains potential adoptive or foster parents for preparation in anticipation of adopting or fostering a special needs child. The board shall define the special needs child and set the payment amount by rule and regulation. Upon appropriate documentation of these preplacement services in a timely manner, payments as set by the board shall be made upon enrollment of each potential adoptive or foster parent for such services;

(8) Staff development and recruitment programs through in-service training and educational scholarships for personnel as may be necessary to assure efficient and effective administration of the services and care for children and youths authorized in this article. The department is authorized to disburse state funds to match federal funds in order to provide qualified employees with graduate or postgraduate educational scholarships in accordance with rules and regulations adopted by the board pursuant to Article VIII, Section VII, Paragraph I of the Constitution of Georgia; and

(9) Miscellaneous services, such as providing all medical, hospital, psychiatric, surgical, or dental services or payment of the costs of such services as may be considered appropriate and necessary by competent medical authority to those children subject to the supervision and control of the department without securing prior consent of parents or legal guardians.

(b) The department is authorized to perform such other duties as may be required under related statutes.

(c)(1) As used in paragraph (2) of this subsection, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any territory or possession of or territory or possession administered by the United States.

(2) The Department of Human Services is authorized to enter into interstate compacts, on behalf of this state, with other states to provide for the reciprocal provision of adoption assistance services.

(3) The purpose of paragraphs (1) and (2) of this subsection is to comply with the requirements of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Part E of Title IV of the Social Security Act and to assure that recipients of adoption assistance in Georgia who change their residences to other states receive adoption assistance services, other than adoption assistance payments, from their new states of residence. (Ga. L. 1963, p. 81, § 11; Ga. L. 1969, p. 939, § 1; Ga. L. 1971, p. 351, § 1; Ga. L. 1973, p. 946, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 518, § 1; Ga. L. 1988, p. 1945, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1992, p. 1983, § 28; Ga. L. 1993, p. 1969, § 3; Ga. L. 1994, p. 409, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 1697, § 1; Ga. L. 2004, p. 645, § 8; Ga. L. 2009, p. 100, § 1/HB 237; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-55/HB 242.)

Delayed effective date. — Subparagraphs (a)(1)(A), (a)(2)(A), and (a)(2)(B), as set out above, become effective January 1, 2014. For version of subparagraphs (a)(1)(A), (a)(2)(A), and (a)(2)(B) in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, deleted “, deprivation,” following “dependency” in subparagraphs (a)(1)(A) and (a)(2)(A), and substituted “complaints of abuse or abandonment” for “complaints of deprivation, abuse, or abandonment” near the beginning of subparagraph (a)(2)(B). See editor’s note for applicability.

Cross references. — Interstate Compact on the Placement of Children, T. 39, C. 4. Powers and duties of Department of Early Care and Learning including requiring notice of absence of liability insurance coverage, § 20-1A-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in paragraph (c)(3) a repetitive “96-” was deleted preceding “96-272”.

Pursuant to Code Section 28-9-5, in 1990, “Part E of Title IV” was substituted for “Title IVE” in paragraph (c)(3).

Editor’s notes. — Ga. L. 1993, p. 1969, contains two sections numbered as “1”. The language quoted below is from the first Section 1 of that Act.

Ga. L. 1993, p. 1969, § 1, not codified by the General Assembly, provides: “The General Assembly estimates that up to \$6 million will be saved on an annual basis

when the provisions of Code Sections 49-4-112, 49-4-113, and 49-4-115 are fully implemented for complete fiscal years. It is the intent of the General Assembly that such cost savings realized by the implementation of these three Code sections be redirected into the Aid to Families with Dependent Children program in the following priorities:

“(1) Extension of transitional Medicaid for up to 24 months provided a federal waiver is obtained;

“(2) Expansion of PEACH program slots; and

“(3) Child care assistance for low-income working families.”

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

U.S. Code. — The federal Adoption Assistance and Child Welfare Act of 1980, referred to in this Code section, is codified principally at 42 U.S.C. § 602 et seq.

Part E of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. 670 et seq.

Administrative rules and regulations. — Rules and regulations for child-placing agencies, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Regulatory Services, Chapter 290-9-2.

Law reviews. — For article criticizing

parental rights doctrine and advocating best interests of child doctrine in parent-third party custody disputes, see 27 Emory L.J. 209 (1978).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 258 (1994). For note, "The Georgia Tort Claims Act: A License for Negligence in Child Deprivation Cases?," see 18 Ga. St. U.L. Rev. 795 (2002).

JUDICIAL DECISIONS

Regional youth development centers. — Department has the authority and responsibility to establish policies and standards governing regional youth development centers. *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

Juvenile courts are not to determine whether a Department of Human Re-

sources facility is up to standard. *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

Cited in *Sanchez v. Walker County Dep't of Family & Children Servs.*, 237 Ga. 406, 229 S.E.2d 66 (1976); *Department of Human Resources v. Ledbetter*, 153 Ga. App. 416, 265 S.E.2d 337 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1 and 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L. 1963, p. 81, §§ 9 and 24 (see O.C.G.A. §§ 49-2-6 and 49-5-7 et seq.) must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

School official not liable for good faith involvement. — School official would not be held liable in a legal action founded upon the official's good faith reference of a child neglect, abuse, or abandonment situation to a county department of family and children services for investigation, or, upon the official's assistance in such investigation by permitting the child to be interviewed at the school or in the offices of the county department dur-

ing school hours. 1963-65 Op. Att'y Gen. p. 746.

Establishment of admission or discharge policies which negate court detention orders. — Department does not have the authority to establish policies for admission to or discharge from regional youth development centers which negate detention orders of the juvenile court or superior court; however, the department does have the authority to establish standards and policies supplementary to the detention orders. 1974 Op. Att'y Gen. No. 74-139.

County departments to provide medical services. — This section authorizing the Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) to provide medical services, or the cost of such services, to children subject to the department's "supervision and control," would apply to children in the custody of county departments of family and children services. 1971 Op. Att'y Gen. No. 71-138.

"Supervision and control" over children committed to county departments. — Any child committed to the

custody of a county department of family and children services is under the "supervision and control" of the Division for Children and Youth (now Department of Children and Youth Services). 1971 Op. Att'y Gen. No. 71-138.

Responsibility of department to transport juveniles to departmental facilities. — It is the responsibility, including the payment of the cost therefor, of the department to transport juveniles, which have been adjudged to be delinquent and committed to the department, from regional youth development centers to state centers inasmuch as both regional and state centers are part of the total facilities of the department which have been established for the care, treatment, and rehabilitation of juveniles committed to the custody of the department. 1969 Op. Att'y Gen. No. 69-360.

Department authorized to contract with counties for land purchases or transfers. — Division for Children and

Youth (now Department of Children and Youth Services) is authorized to contract with a county for the purchase or transfer of land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

Department may contract with a county to construct and equip a temporary care facility for youths, pending juvenile delinquency proceedings, provided that funds appropriated from the Governor's Emergency Fund do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-119.

Parents' consent to placement of children without legal action. — Department may request that parents consent to placement of their children outside the family home without the department instituting legal action as long as the requirements for voluntary placement are met. 1996 Op. Att'y Gen. No. U96-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Adoption, § 31. 23 Am. Jur. 2d, Desertion and Nonsupport, § 29 et seq. 41 Am. Jur. 2d, Illegitimate Children, § 1. 42 Am. Jur. 2d, Infants, § 15 et seq.

C.J.S. — 2 C.J.S., Adoption, §§ 1 et seq., 49. 43 C.J.S., Infants, §§ 4, 5, 16 et seq. 67A C.J.S., Parent and Child, § 359 et seq.

ALR. — Construction and application of agreement by medical or social work student to work in the particular position or at particular location in exchange for financial aid in meeting costs of education, 83 ALR3d 1273.

Parent's obligation to support unmarried minor child who refuses to live with parent, 98 ALR3d 334.

49-5-9. Use of public and private institutions and agencies; inspections; examination and control of children not in department's facilities.

(a) The department is authorized to make use of law enforcement detention, supervisory, medical, educational, and other public or private facilities, institutions, and agencies within the state for the purposes of this article; provided, however, that this shall not give the department authority to transfer any child or youth under its custody and control to any penal institution in the state without due process of law. When funds are available, the department may enter into agreements with appropriate private or public officials of private or public institutions and agencies for separate care and special treatment of children and youths subject to the control of the department.

(b) The department is given the right and is required to inspect periodically all public and private institutions and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the department reasonable opportunity to examine or consult with children and youths committed to the department who are for the time being in the custody of the institution or agency.

(c) Placement of a child or youth by the department in any institution or agency not operated by the department or the release of such child or youth from such an institution or agency shall not terminate the control of the department over such child or youth. No child or youth placed in such institution or under such an agency may be released by the institution or agency without the approval of the department. (Ga. L. 1963, p. 81, § 12.)

JUDICIAL DECISIONS

Cited in In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1 and 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L.

1963, p. 81, §§ 1, 9 and 24 (see O.C.G.A. §§ 49-2-6, 49-5-7, 49-5-9 and 49-5-10 [repealed](now see §§ 49-4A-8 and 49-5-1), must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

RESEARCH REFERENCES

C.J.S. — 78 C.J.S., Schools and School Districts, § 507 et seq.

49-5-10. Commitment of delinquent or unruly children to department; procedures; handling and treatment; escape and apprehension; release; termination of control.

Reserved. Repealed by Ga. L. 1992, p. 1983, § 29, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1963, p. 81, § 13; Ga. L. 1976, p. 1066, § 1; Ga. L. 1978, p. 1510, §§ 1, 2; Ga. L. 1980, p. 1046, § 1; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 538, § 1; Ga. L. 1983,

p. 539, § 2; Ga. L. 1984, p. 22, § 49; Ga. L. 1990, p. 540, § 3; and Ga. L. 1990, p. 1930, § 8.

49-5-10.1. Temporary transfer of at-risk unruly or delinquent children to Department of Corrections; procedure; review; discharge.

Repealed by Ga. L. 1997, p. 559, § 1, effective July 1, 1997.

Editor's notes. — Ga. L. 1997, p. 1453, §§ 1 and 3 purported to make editorial changes to this Code section.

This Code section was based on Code 1981, § 49-5-10.1, enacted by Ga. L. 1990, p. 1930, § 9; Ga. L. 1992, p. 1983, § 30.

49-5-11. Escape from a youth detention center.

Reserved. Repealed by Ga. L. 1992, p. 1983, § 31, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1969, p. 996, § 1; Ga. L. 1972, p. 1251, § 1; Ga. L. 1973, p. 563,

§ 1; Ga. L. 1974, p. 1455, § 1; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1985, p. 283, § 1.

49-5-12. Licensing and inspection of child welfare agencies; standards; revocation or refusal of license; penalties; violations.

(a) As used in this Code section, the term “child welfare agency” means any child-caring institution, child-placing agency, children’s transition care center, or maternity home.

(b) All child welfare agencies, as defined in subsection (a) of this Code section, shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board. The board shall develop and publish in print or electronically rules and regulations for licensing or commissioning of child welfare agencies. Child welfare agencies electing to be commissioned rather than licensed shall operate in accordance with the same procedures, standards, rules, and regulations for licensing of child welfare agencies. A license issued to a child-placing agency shall be deemed approval of all foster family homes approved, supervised, and used by the licensed child-placing agency as a part of its work, subject to this article and rules and regulations of the board.

(c) The department shall assist applicants or licensees or persons holding commissions in meeting rules and regulations of the department for child welfare agencies and, if a licensee or person holding a commission is, for any reason, denied renewal of a license or commission or if a license or commission is revoked or if any applicant for a license or commission cannot meet department rules and regulations

for child welfare agencies, the department shall assist in planning the placement of children, if any, in the custody of such child welfare agency in some other licensed or commissioned child welfare agency or assist in returning them to their own homes or in making any other plans or provisions as may be necessary and advisable to meet the particular needs of the children involved.

(d) Application for a license or commission shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license or commission and upon presentation by the applicant of evidence that the child welfare agency meets the rules and regulations prescribed by the department, the department shall issue such child welfare agency a license or commission for no more than one year.

(e) If the department finds that any child welfare agency applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child welfare agency, but such temporary license or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such agency is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(f) The department shall refuse a license or commission upon a showing of:

(1) Noncompliance with the rules and regulations for child welfare agencies as adopted by the Board of Human Services which are designated in writing to the facilities as being related to children's health and safety;

(2) Flagrant and continued operation of an unlicensed or uncommissioned facility in contravention of the law; or

(3) Prior license or commission denial or revocation within one year of application.

(g) All licensed or commissioned child welfare agencies shall prominently display the license or commission issued to such agency by the department at some point near the entrance of the premises of such agency that is open to view by the public.

(h) The department's action revoking or refusing to renew or issue a license or commission required by this Code section shall be preceded

by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that only 30 days' notice in writing from the commissioner's designee shall be required prior to license or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(i) Child-caring institutions and child-placing agencies, when licensed in accordance with this Code section, may receive needy or dependent children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care. Parents, guardians, custodians, or persons serving in loco parentis to such children may sign releases or agreements giving to such institutions or agencies custody and control over such children during the period of care. Children's transition care centers may receive medically fragile children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care to facilitate transitions from a hospital or other facility to a home or other appropriate setting.

(i.1) A children's transition care center shall serve no more than six children per residence or 16 children per campus at a time. Children's transition care center services shall be available to all families in this state, including those whose care is paid for through the Department of Community Health or the Department of Human Services or by insurance companies that cover home health care services or private duty nursing care in the home. Each children's transition care center location shall be physically separate and apart from any other facility licensed by the Department of Human Services under this chapter and shall provide one or more of the following services: respite care, registered nursing or licensed practical nursing care, transitional care for the facilitation of transitions to a home or other appropriate setting and reunion of families, medical day care, weekend camps, and diagnostic studies typically done in the home setting.

(j) Child-placing agencies, in placing children in foster family homes, shall safeguard the welfare of such children by thoroughly investigating each such home and the character and reputation of the persons residing therein and shall adequately supervise each home during the period of care. All children placed in foster family homes shall, as far as is practicable, be placed with persons of the same religious faith as the children themselves or the children's parents.

(k) It shall be the duty of the department to inspect at regular intervals all licensed or commissioned child welfare agencies within the

state, including foster family homes used by such child-placing agencies. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee or commissionee.

(l) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any child welfare agency or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(m) If abuses, derelictions, or deficiencies are found in the operation and management of any child welfare agency, they shall be brought immediately to the attention of the management of such agency; and if correctable, but not corrected within a reasonable time, the department shall revoke the license or commission of such agency in the manner prescribed in this Code section.

(n) The department may require periodic reports from child welfare agencies in such forms and at such times as the department may prescribe.

(o) Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government shall not be subject to licensure under this Code section, but the department may, through its authorized agents, make periodic inspections of such agencies, facilities, and institutions. Reports of such inspections shall be made privately to the proper authorities in charge of such agencies, facilities, or institutions. The department shall cooperate with such authorities in the development of standards that will adequately protect the health and well-being of all children and youths detained in such agencies, facilities, and institutions or provided care by them. The department may recommend changes in programs and policies and if, within a reasonable time, the standards established by the department and the recommendations of the department are not met, it shall be the duty of the commissioner to make public in the community in which such agency, facility, or institution is located the report of the above-mentioned inspection and the changes recommended by the department. If any serious abuses, derelictions, or deficiencies are found and are not corrected within a reasonable time, the commissioner shall report them in writing to the Governor.

(p) Any child welfare agency that shall operate without a license or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license or commission shall constitute a separate offense.

(q) No person, official, agency, hospital, maternity home, or institution, public or private, in this state shall receive or accept a child under 17 years of age for placement or adoption or place such a child, either temporarily or permanently, in a home other than the home of the child's relatives without having been licensed or commissioned by the department. Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection shall be punishable by a fine of not less than \$100.00 nor exceeding \$500.00 for each offense. Nothing in this Code section shall be construed to prohibit a properly licensed attorney at law from providing necessary legal services and counsel to parties engaged in or contemplating adoption proceedings. Nothing in this Code section shall be construed to prohibit an individual seeking to:

(1) Adopt a child or children from receiving or accepting a child or children in the individual's home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or

(2) Have that individual's child or children placed for adoption from placing that individual's child or children in the home of an individual who is not related to the child or children in anticipation of the individual's initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19.

(r) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of a child welfare agency without a license or commission or the continued operation of a child welfare agency in willful violation of this article or of any regulation of the department or in violation of any order of the board.

(s) The term "licensed child welfare agency" shall include a commissioned child welfare agency and any references in this Code to a licensed child welfare agency, including criminal, administrative, and civil provisions applicable to licensed child welfare agencies, shall include and apply to commissioned child welfare agencies unless otherwise provided in this article. (Ga. L. 1963, p. 81, §§ 3, 14; Ga. L. 1967, p. 772, § 1; Ga. L. 1973, p. 560, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 706, §§ 1, 3, 9, 10; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1986, p. 1038, § 1; Ga. L. 1987, p. 1435, §§ 3, 4; Ga. L. 1988, p. 217, § 1; Ga. L. 1989, p. 1795, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1991, p. 408, §§ 2-4; Ga. L. 1991, p. 1640, § 13; Ga. L. 1992, p. 6, § 49; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 650, § 4; Ga. L. 2004, p. 645, § 9; Ga. L. 2004, p. 1085, § 1; Ga. L. 2008, p. 1145, § 2/HB 984; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2009, p. 800, § 6/HB 388; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 135, § 11/HB 354.)

The 2013 amendment, effective July 1, 2013, deleted former subsection (t), which read: "The department shall recommend in writing to the owner of any facil-

ity operated as a day-care center, family day-care home, group day-care facility, or group day-care home or any child learning center licensed by the Department of Early Care and Learning that such facility carry liability insurance coverage sufficient to protect the facility's clients. Any such facility which after receiving such recommendation is not covered by liability insurance shall post that fact in a conspicuous place in the facility and shall notify the parent or guardian of each child under the care of the facility in writing. Such notice shall be in at least 1/2 inch letters. Each such parent or guardian must acknowledge receipt of such notice in writing and a copy of such acknowledgment shall be maintained on file at the facility at all times while the child attends the facility and for 12 months after the child's last date of attendance. Failure to do so may subject the owner of the facility to a civil fine of \$1,000.00 for each such infraction."

Cross references. — Applicability of Interstate Compact on the Placement of Children regarding requirements for visi-

tation, inspection, or supervision of children, homes, institutions, or other agencies in another state which is party to compact, § 39-4-10.

Editor's notes. — Ga. L. 2009, p. 800, § 1/HB 388, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Option of Adoption Act.'"

Administrative rules and regulations. — Group day care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Family & Children Services; Child Care Institutions, Chapters 290-2-1 et seq.

Immunization of children as a prerequisite to admission to schools and other facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-4.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 57 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 126 (1994).

JUDICIAL DECISIONS

Department of Human Resources licensure of church-operated children's home. — Requirement that the Department of Human Resources license a church-operated children's home as a child caring institution pursuant to the Children and Youth Act, O.C.G.A. § 49-5-1 et seq., and department regulations governing child caring institutions does not violate the free exercise clause of the First Amendment, nor would the requirement violate the establishment clause of the First Amendment since such a requirement in no way aids, furthers, or confers a special benefit on any religious group. *Darrell Dorminey Children's Home v. Georgia Dep't of Human Resources*, 260 Ga. 25, 389 S.E.2d 211 (1990).

Foster children. — O.C.G.A. §§ 15-11-13, 15-11-58, 20-2-690.1 and 49-5-12 set out in clear detail the rights and services to which foster children are entitled. As a result, the federal statutory pro-

visions in question are not too vague and amorphous to be enforced by the judiciary and each of the state statutes at issue impose specific duties on the state defendants. Thus, the federal regulatory scheme embodied in the Child and Family Services Review process does not relieve the state defendants of the defendants' obligation to fulfill the defendants' statutory duties to plaintiff foster children, nor does the regulatory scheme provide a legal excuse for the defendants' failure to do so. *Kenny A. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

Action for deprivation of civil rights. — Georgia statutory foster care scheme created in a two-year-old child a legitimate and sufficiently vested claim of entitlement such that deprivation of that entitlement without due process of law imposed on the child a grievous loss, supporting the child's action for injuries under the federal Civil Rights Act. *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791

(11th Cir. 1987), cert. denied, 489 U.S. 1065, 109 S. Ct. 1337, 103 L. Ed. 2d 808 (1989).

Private cause of action. — Following factors are relevant in determining whether a private remedy is implicit in a statute not expressly providing one: first, whether the plaintiff is one of the class for whose special benefit the statute was enacted; second, whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; third, whether it is consistent with the underlying purpose of the legislative scheme to imply such a remedy for

plaintiff. When foster children alleged that certain child services agencies and officials violated O.C.G.A. § 49-5-12(j), that subsection conferred upon the children a private cause of action. *Kenny A. v. Perdue*, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003).

Cited in Department of Human Resources v. Ledbetter, 153 Ga. App. 416, 265 S.E.2d 337 (1980); Penaranda v. Cato, 740 F. Supp. 1578 (S.D. Ga. 1990); *Kenny A. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

OPINIONS OF THE ATTORNEY GENERAL

After school care programs on county school premises. — Department of Human Resources may not license “latch key” or “after school” care programs operated by county school systems on the school’s premises. 1985 Op. Att’y Gen. No. 85-11.

After school care programs operated by outside organization. — Department of Human Resources licensing obligations would extend to a “latch-key” or “after-school” care program on the premises of county school systems if the program is operated by an outside organization rather than school authorities. 1988 Op. Att’y Gen. No. U88-6.

Board authorized to adopt and department to enforce fire safety standards. — Board of Human Resources has lawful authority to adopt the 1973 Life Safety Code (National Fire Protection Association standard 101), a comprehensive set of standards that deals with preventing and controlling losses from fire, as part of the rules and regulations for day-care centers, and the Department of

Human Resources has lawful authority to enforce compliance with code standards. 1976 Op. Att’y Gen. No. U76-6.

Board’s standards for juvenile detention facilities are inapplicable to jails. — Detention standards adopted by the Board of Human Resources for juvenile detention facilities do not apply to jails in which juveniles are confined. 1974 Op. Att’y Gen. No. 74-139.

Steps necessary to cease operation of unlicensed day-care center. — Division for Children and Youth (now Department of Children and Youth Services), in the absence of specific injunctive authority, must first try to obtain a misdemeanor warrant to stop the unlicensed operation of a day-care center, and, if this proves futile or inadequate, may bring an action for equitable injunction. 1970 Op. Att’y Gen. No. 70-105.

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att’y Gen. No. 91-35.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 39 et seq., 71 et seq.

ALR. — Tort liability of private nursery

school or day-care center, or employee thereof, for injury to child while attending facility, 58 ALR4th 240.

49-5-12.1. Penalties for violation of child welfare agency laws and regulations.

(a) Unless otherwise provided in subsection (r) of Code Section 49-5-12, any person who violates the provisions of Code Section 49-5-12 or who hinders, obstructs, or otherwise interferes with any representative of the department in the discharge of that person's official duties in making inspections as provided in Code Section 49-5-12 or in investigating complaints as provided in Code Section 49-5-12 shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing or registration provision of this chapter or any rule, regulation, or order issued under this chapter or any term, condition, or limitation of any license or registration certificate under this chapter thereby subjecting a child in care to injury or a life-threatening situation; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the department, not to exceed \$500.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the department proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any

person upon whom a civil penalty is imposed may appeal such action pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(3) A civil penalty finally determined under this Code section may be collected by civil action in the event that such penalty is not paid as required. On the request of the department, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the Attorney General for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund. (Code 1981, § 49-5-12.1, enacted by Ga. L. 1986, p. 1038, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 84, 99, 100.

49-5-13. Private child care learning centers not required to meet federal adult-child ratio.

Nothing in this article or any rules and regulations adopted hereunder shall be construed to require that private child care learning centers maintain a ratio of adults to children under care that is commensurate with any federal requirement concerning such adult to child ratio. (Ga. L. 1970, p. 720, § 1; Ga. L. 2013, p. 135, § 12/HB 354.)

The 2013 amendment, effective July 1, 2013, substituted “child care learning centers” for “day-care centers” in the middle of this Code section.

49-5-14. Fire inspections of day-care homes and centers; fire safety codes.

Reserved. Repealed by Ga. L. 1985, p. 1642, § 1, effective July 1, 1985.

Editor’s notes. — This Code section was based on Ga. L. 1984, p. 706, §§ 4, 5, 11; Ga. L. 1984, p. 22, § 49.

Code section provided that nothing in the Act would amend or repeal the definitions contained in Chapter 5 of Title 49.

Section 3 of the Act which repealed this

49-5-15. Notice as to child brought into state for placement or adoption; bond; certificate as to foster home; reports.

No person shall bring or send into the state any child for the purpose of placing him or procuring his adoption without first filing notice with the department. He shall file with the department a bond payable to the state for each child he intends to send or bring, approved by the department, in the penal sum of \$1,000.00, conditioned that he will not send or bring into the state any child who is incorrigible or unsound in mind or body; that he will remove any such child who becomes a public charge or who, in the opinion of the department, becomes a menace to the community prior to his adoption or becoming of legal age; and that the person with whom the child is placed shall be responsible for his proper care and training. Before any child shall be brought or sent into the state for the purpose of placing him in a foster home, the person so bringing or sending such child shall first notify the department of his intention and shall obtain from the department a certificate stating that such home is, in the opinion of the department, a suitable home for the child. Such notification shall state the name, age, and personal description of the child; the name and address of the person with whom the child is to be placed; and such other information as may be required by the department. The person bringing or sending such child into the state shall report at least once each year and at such other times as the department shall direct as to the location and well-being of the child so long as such child shall remain within the state and until he shall have reached the age of 18 or shall have been legally adopted. (Ga. L. 1963, p. 81, § 15.)

Cross references. — Interstate Compact on the Placement of Children, T. 39, C. 4.

RESEARCH REFERENCES

C.J.S. — 2 C.J.S., Adoption of Persons, §§ 46, 48.

49-5-16. Power of department to contract; acceptance of children from federal courts for compensation.

(a) The department shall have the power and is authorized:

(1) To enter into contracts with federal, state, county, and municipal governments and their agencies and departments; public and private institutions and agencies of this and other states; and individuals, as may be necessary or desirable in effectuating the purposes of this article;

(2) To enter into contracts and cooperative agreements with county or district departments of family and children services as may be necessary or desirable in effectuating the purposes of this article;

(3) To enter into reciprocal agreements with appropriate public and private institutions and agencies of other states relative to providing child welfare and youth services to nonresident children and youths; and to cooperate with such institutions and agencies in establishment and operation of group-care facilities appropriate for social study, treatment, and rehabilitation of children and youths; and

(4) To accept children and youths from federal courts and provide them social services within the scope of this article for compensation and under such terms as may be agreed upon.

(b) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner. (Ga. L. 1963, p. 81, § 17.)

OPINIONS OF THE ATTORNEY GENERAL

Acceptance of children from federal institutions and provision of services in state facilities. — Department of Family and Children Services (now Division of Family and Children Services of the Department of Human Resources) is authorized to enter into agreements to accept children and youth from the federal penal and corrective institutions and agencies and to provide those institutions and agencies with the services extended by the facilities of the department to those children taken pursuant to Georgia court orders; the conditions and circumstances under which such agreements should be effectuated is a matter within the administrative powers of the board pursuant to Ga. L. 1963, p. 81, § 6 (see O.C.G.A. § 49-5-5) and can be effectuated by the adoption of such appropriate rules and regulations as the board deems necessary. Adequate compensation for the costs thereof may be collected by the department from the agency transferring the children or youth to the Georgia facilities. 1968 Op. Att'y Gen. No. 68-191.

Contracting with counties for purchase or transfer of land. — Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) is authorized to contract with a county for the purchase or transfer of land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

Department may contract with a county to construct and equip a temporary care facility for youths, pending juvenile delinquency proceedings, provided that funds appropriated from the Governor's Emergency Fund do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-119.

Board may contract to pay travel expenses of volunteers. — Board of Human Resources, through the board's specifically delegated contractual authority, may contract in writing to pay travel expenses to volunteer workers performing work properly authorized by the department. 1971 Op. Att'y Gen. No. 71-76.

49-5-17. Power of department to accept and use gifts.

The department is authorized and empowered to receive, accept, hold, and use, on behalf of the state and for purposes provided for in this article, gifts, grants, donations, devises, and bequests of real, personal, and mixed property of every kind and description. (Ga. L. 1963, p. 81, § 18.)

OPINIONS OF THE ATTORNEY GENERAL

Department of Human Resources may accept public funds donated voluntarily by counties for the provision of day-care and other social services to welfare applicants and other authorized recipients. 1972 Op. Att'y Gen. No. 72-12.

Contracting with counties for purchase or transfer of land. — Division

for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) is authorized to contract with a county for the purchase or transfer of land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

RESEARCH REFERENCES

C.J.S. — 14 C.J.S., Charities, §§ 16, 32 et seq.

49-5-18. Instituting or intervening in legal proceedings.

The commissioner is authorized to institute or to intervene in any legal proceedings necessary to the performance of duties and responsibilities of the department and to the enforcement of this article and provisions of policies, standards, rules, and regulations established by the board in conformity with this article as may be commensurate with the legal status of the department to a child or youth committed to the care, custody, or control of the department or as may otherwise be specifically provided for in this article. (Ga. L. 1963, p. 81, § 19.)

49-5-19. Annual report on children and youth services.

The commissioner shall prepare and publish in print or electronically an annual report on the operations of the department and of county departments of family and children services under this article and submit it to the Governor, the board, and all interested persons, officials, agencies, and groups, public or private. The report shall contain, in addition to information, statistics, and data required by other provisions of this article, a comprehensive analysis of performance of child welfare and youth services throughout the state; an analysis of goals to reduce by 1 percent each year, beginning with the fiscal year that starts October 1, 1983, the number of children who have been in family or institutional foster care for a period of 24 months or

longer, as provided by Public Law 96-272; and such other information and recommendations of the commissioner as may be suitable. (Ga. L. 1963, p. 81, § 20; Ga. L. 1982, p. 1120, §§ 1, 2; Ga. L. 2010, p. 838, § 10/SB 388.)

U.S. Code. — Public Law 96-272, the Welfare Act of 1980, is codified in numerous provisions of Title 42 of the U.S. Code.

49-5-20. Existing charters of charitable institutions.

Nothing in this article shall be deemed to revoke any charter of incorporation of any orphans' home or charitable or benevolent institution incorporated and established under the Act of the General Assembly approved December 18, 1894 (Ga. L. 1894, p. 80), as amended by the Act of the General Assembly approved December 16, 1898 (Ga. L. 1898, p. 104), notwithstanding the repeal of such Acts by Ga. L. 1963, p. 81, Section 24, or to impair or diminish the rights, powers, or privileges of such corporation as provided in its charter of incorporation. (Ga. L. 1963, p. 81, § 22; Ga. L. 1994, p. 97, § 49.)

49-5-21. Penalties for aiding, harboring, or encouraging escapees or hindering their apprehension.

(a) Any person who shall knowingly aid, assist, or encourage any child or youth under the lawful control or custody of the department or of any licensed child welfare agency or home or facility used by such agency, public or private, to escape or to attempt to escape its control or custody shall be guilty of a misdemeanor.

(b) Any person who shall knowingly harbor, shelter, entertain, or encourage any child or youth who has escaped the lawful custody or control of the department or of any licensed child welfare agency or home or facility used by such agency, public or private, shall be guilty of a misdemeanor.

(c) Any person who shall knowingly hinder the apprehension of any child under the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a misdemeanor. (Ga. L. 1963, p. 81, § 16; Ga. L. 1976, p. 1066, § 2.)

49-5-22. Voluntary pre-kindergarten programs to provide toilet facilities screened for privacy.

(a) The General Assembly finds that just as gender separated toileting among nonrelatives is the norm among adults, children should

be allowed the same opportunity to practice modesty when independent toileting behavior is well established among the majority of their age group. Standardized adherence to this policy would provide privacy, injury control, and sanitation.

(b) Each public or private voluntary pre-kindergarten program in this state which receives state funding shall provide toilet facilities for the four-year-old pre-kindergarten age children which it serves which are suitably screened for privacy. Nothing contained in this Code section shall be construed to require a pre-kindergarten program to provide separately constructed toilet facilities.

(c) The provisions of subsection (b) of this Code section shall not apply to any voluntary pre-kindergarten program which provides separate and gender-specific toilet facilities for the children which it serves. (Code 1981, § 49-5-22, enacted by Ga. L. 1996, p. 991, § 1; Ga. L. 1997, p. 143, § 49.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “four-year-old” was substituted for “four year old” in the first sentence of subsection (b).

49-5-23. Obtaining information on recall notices.

(a) Any agency, department, or office that regulates child welfare agencies shall make available to such child welfare agencies at the time of application for initial or renewal certification or licensure information concerning contacting the U.S. Consumer Product Safety Commission to obtain recall notices on unsafe child and infant products.

(b) Child welfare agencies shall post the phone number and website of the U.S. Consumer Product Safety Commission in a location visible to parents and visitors. The notice shall also advise such parents and visitors on how to obtain recall notices on unsafe child and infant products. (Code 1981, § 49-5-23, enacted by Ga. L. 2004, p. 333, § 1.)

ARTICLE 2

CHILD ABUSE AND DEPRIVATION RECORDS

Cross references. — Procedures for reporting of instances of child abuse, and as to penalty for failure to report suspected cases of child abuse, § 19-7-5. Battery, assault, stalking, and other offenses involving family members, § 19-13-1 et seq.

Law reviews. — For note on 1993 amendment of this article, see 10 Ga. St. U.L. Rev. 131 (1993).

49-5-40. Definitions; confidentiality of records; restricted access to records.

(a) As used in this article, the term:

(1) "Abused" means subjected to child abuse.

(2) "Child" means any person under 18 years of age.

(3) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an "abused" child.

(4) "Near fatality" means an act that places a child in serious or critical condition as certified by a physician.

(5) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

“Sexual abuse” shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(6) “Sexual exploitation” means conduct by any person who allows, permits, encourages, or requires that child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(b) Each and every record concerning reports of child abuse and child controlled substance or marijuana abuse which is in the custody of the department or other state or local agency is declared to be confidential, and access thereto is prohibited except as provided in Code Section 49-5-41 and Code Section 49-5-41.1.

(c) Each and every record concerning child abuse or neglect which is received by the department from the child abuse and neglect registry of any other state shall not be disclosed or used outside the department for any other purpose other than conducting background checks to be used in foster care and adoptive placements. (Ga. L. 1975, p. 1135, § 1; Ga. L. 1987, p. 1000, § 2; Ga. L. 1990, p. 1778, § 1; Ga. L. 1993, p. 1712, § 1; Ga. L. 2007, p. 478, § 7/SB 128; Ga. L. 2009, p. 43, § 1/SB 79; Ga. L. 2009, p. 733, § 3/SB 69.)

Cross references. — Persons required to report instances of child abuse, § 19-7-5. Battery, assault and stalking involving family members, § 19-13-1 et seq.

Law reviews. — For article, “Georgia’s Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine,” see 40 Mercer L. Rev. 1 (1988).

JUDICIAL DECISIONS

Discovery of “scientific records.” — Former O.C.G.A. § 17-7-211 did not provide an independent statutory basis for discovery of “scientific records” of child abuse maintained by institutions listed in O.C.G.A. § 49-5-40. In the absence of obtaining a statutory exception by compliance with O.C.G.A. § 49-5-41 or O.C.G.A.

§ 49-5-41.1, as applicable, such child abuse records remain protected. *Horne v. State*, 192 Ga. App. 528, 385 S.E.2d 704 (1989), cert. denied, 494 U.S. 1006, 110 S. Ct. 1302, 108 L. Ed. 2d 749 (1990).

Failure to provide county child abuse records. — Trial court erred by failing to provide the defendant with the

county child abuse documents the defendant requested during the defendant's trial for child molestation, but the defendant was not denied due process since the defendant failed to show that the trial court withheld any material, exculpatory information. *Dodd v. State*, 293 Ga. App. 816, 668 S.E.2d 311 (2008).

Oral allegation of child abuse to Department of Family and Children Services was publication for purposes of slander claim. — Although under O.C.G.A. § 49-5-40(b), reports made to the Department of Family and Children Services (DFACS) are confidential, the law of defamation requires only that the statement be disseminated to any person other than the person slandered. Therefore, a landlord's oral allegations to a DFACS employee that a tenant committed child abuse amounted to "publication" for purposes of O.C.G.A. § 51-5-4. *Brown v. Rader*, 299 Ga. App. 606, 683 S.E.2d 16 (2009).

Criminal defendant not entitled to

MySpace.com and school records. — Trial court did not abuse the court's discretion in denying the defendant access to the incest victim's MySpace.com and school records because the defendant failed to show both the materiality and the favorable nature of the evidence sought. *Stephens v. State*, 305 Ga. App. 339, 699 S.E.2d 558 (2010).

Burden on defendant to show need for release of records. — Trial court did not err by failing to release documents showing earlier child abuse from a child's file which might have been critical to a defendant's case since the burden was on the defendant to show what documents in a child's sealed file were suppressed and how it was materially exculpatory and the defendant failed to make the showing. *Dunagan v. State*, 255 Ga. App. 309, 565 S.E.2d 526 (2002).

Cited in *Ray v. Department of Human Resources*, 155 Ga. App. 81, 270 S.E.2d 303 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Release of records to Department of Education hearing officers. — Those portions of child protective service records releasable to parents and guardians under Social Services County Letter No. 86-1 promulgated pursuant to federal court order in *J.J. v. Ledbetter*, C.A. No. CV180-84, U.S.D.C., S.D. Ga. (1985), may likewise be released to Department of Education hearing officers conducting hearings under the Education of All Handicapped Act, 20 U.S.C. § 1401 et

seq., if, and only if, (1) the parents specifically request in writing that the Department of Human Resources forward the records to the hearing officer, or (2) the Department of Human Resources receives a written request for the records from the hearing officer personally and is subsequently able to secure the written permission of the parents to forward the records to the hearing officer. 1987 Op. Att'y Gen. No. 87-25.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statute limiting physician-patient privilege in judicial proceedings relating to child abuse or neglect, 44 ALR4th 649.

Denial or restriction of visitation rights to parent charged with sexually abusing child, 1 ALR5th 776.

49-5-41. (For effective date, see note.) Persons and agencies permitted access to records.

(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, or any agency of any such entity, that has a need for information contained in such reports in order to carry out its legal responsibilities to protect children from abuse and neglect;

(2) A court, by subpoena, upon its finding that access to such records may be necessary for determination of an issue before such court; provided, however, that the court shall examine such record in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then before it and the record is otherwise admissible under the rules of evidence;

(3) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

(4) The district attorney of any judicial circuit in this state, a solicitor-general, or any assistant district attorney or assistant solicitor-general who may seek such access in connection with official duty;

(5) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality, unless such disclosure of information would jeopardize a criminal investigation or proceeding, but such access shall be limited to a disclosure of the available facts and findings. Any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers.

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

(7.1) A child advocacy center which is certified by the Child Abuse Protocol Committee of the county where the principal office of the center is located as participating in the Georgia Network of Children's Advocacy Centers or a similar accreditation organization and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, and which has been created and supported through one or more intracommunity compacts between such advocacy center and one or more police agencies, the office of the district attorney, a legally mandated public or private child protective agency, a mental health board, and a community health service board; provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such records;

(8) Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected abuse or any child fatality review panel or child abuse protocol committee or subcommittee thereof created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from abuse and neglect, which protective actions include bringing criminal actions for such abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

(9) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner of the department which specifies the name of the child for which such access is sought and which describes such officer's need to have access to such records

in order to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4).

(b)(1) Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

(2) The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

(3) Notwithstanding the provisions of this subsection, access to the child abuse registry created pursuant to Article 8 of this chapter shall not be permitted except as allowed by Article 8 of this chapter.

(c) The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may

release information from such records to the following persons or agencies when deemed appropriate by such department:

(1) A physician who has before him a child whom he reasonably suspects may be abused;

(2) A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the Department of Human Services by locating or providing foster or adoptive homes for children in the custody of the department, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

(3) A person legally authorized to place a child in protective custody when such person has before him a child he reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

(4) An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

(5) An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including but not limited to members of officially recognized citizen review panels, court appointed guardians ad litem, certified Court Appointed Special Advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a county child abuse protocol committee or task force;

(6) A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the department's investigation of a report of child abuse, the alleged abuser has left this state;

(7) A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(8) An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(9) Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

(10) Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2 of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this Code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

(11) The Department of Early Care and Learning or the Department of Education; or

(12) An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available.

(d) Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's

record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is disclosed regarding such child.

(e) (For effective date, see note.) Notwithstanding any other provisions of law, with the exception of medical and mental health records made confidential by other provisions of law, child abuse and dependency records applicable to a child who at the time of his or her fatality or near fatality was:

- (1) In the custody of a state department or agency or foster parent;
- (2) (For effective date, see note.) A child as defined in paragraph (3) of Code Section 15-11-741; or
- (3) (For effective date, see note.) The subject of an investigation, report, referral, or complaint under Code Section 15-11-743

shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records; provided, however, that any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers. Upon the release of documents pursuant to this subsection, the department may comment publicly on the case. (Ga. L. 1975, p. 1135, § 2; Ga. L. 1990, p. 1778, § 2; Ga. L. 1991, p. 1320, §§ 1-3; Ga. L. 1993, p. 979, § 2; Ga. L. 1993, p. 1712, § 2; Ga. L. 1994, p. 967, §§ 1, 2; Ga. L. 1996, p. 1143, § 1; Ga. L. 1997, p. 844, § 4; Ga. L. 1998, p. 609, § 5; Ga. L. 2000, p. 243, § 3; Ga. L. 2001, p. 4, § 49; Ga. L. 2002, p. 861, § 1; Ga. L. 2003, p. 497, § 1; Ga. L. 2004, p. 645, § 16; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2007, p. 478, § 8/SB 128; Ga. L. 2009, p. 43, §§ 2, 3/SB 79; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 316, § 1/HB 303; Ga. L. 2013, p. 294, § 4-56/HB 242.)

Delayed effective date. — Subsection (e), as set out above, becomes effective January 1, 2014. For version of subsection (e) in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective Janu-

ary 1, 2014, in subsection (e), substituted "dependency records" for "deprivation records" in the introductory paragraph; substituted "Code Section 15-11-741" for "Code Section 15-11-171" in paragraph (e)(2); and substituted "Code Section

15-11-743” for “Code Section 15-11-173” in paragraph (e)(3). See editor’s note for applicability.

Cross references. — Investigation of instances of child abuse or neglect in custody disputes, § 19-9-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was inserted following “Lieutenant Governor” in paragraph (a)(10) (now (a)(9)).

Pursuant to Code Section 28-9-5, in 2000, “complaint” was substituted for “compliant” in paragraph (e)(3).

Pursuant to Code Section 28-9-5, in 2007, “and” was deleted from the end of paragraph (c)(10), and “; or” was substituted for a period at the end of paragraph (c)(11).

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 268 (1990). For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 194 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 260 (1994). For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 307 (1996). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 331 (2002).

JUDICIAL DECISIONS

If the juvenile court considers it necessary for resolution of an issue before the court, the court may order disclosure of information. *Ray v. Department of Human Resources*, 155 Ga. App. 81, 270 S.E.2d 303 (1980).

Procedure for obtaining records for child abuse investigation. — When the defendant assigned error to the trial court’s failure to direct the Department of Human Resources to disclose any and all reports used by or prepared by the department in investigating an allegation of child abuse, since the records sought by defendant were confidential and access thereto was prohibited except as provided by O.C.G.A. Art. 2, Ch. 5, T. 49, the proper procedure for obtaining access was to petition the trial court to subpoena the records and conduct an in camera inspection as to whether the records were necessary for determination of an issue before the court and were otherwise admissible under the rules of evidence. Defendant’s general Brady motion was inadequate to have properly raised this issue in the court below, and the assertion of error in this regard was meritless. *Davidson v. State*,

183 Ga. App. 557, 359 S.E.2d 372, cert. denied, 183 Ga. App. 905, 359 S.E.2d 372 (1987).

Criminal defendant not entitled to records. — In a prosecution for aggravated child molestation and related crimes, the trial court did not err in denying the defense request for the notes and work product of the social workers who testified at trial concerning the social workers’ contact with the children involved. *Moss v. State*, 216 Ga. App. 711, 455 S.E.2d 411 (1995).

In a prosecution for child molestation, the trial court did not err in denying the defendant’s request for a complete copy of files from the Department of Family and Children Services. *Honeycutt v. State*, 245 Ga. App. 819, 538 S.E.2d 870 (2000).

Given the fact that the defendant failed to request an in camera inspection of confidential records and files pertaining to allegations of sexual abuse allegedly committed by the defendant until appellate counsel did so in the second amended motion for new trial, the state was not obligated to produce the information and did not violate the defendant’s due process

rights under Brady or Georgia's reciprocal discovery act by not providing the file earlier. Moreover, some of the information was known to the defendant, and no showing that the information could have been obtained with due diligence was made. *Ellis v. State*, 289 Ga. App. 452, 657 S.E.2d 562 (2008).

In a child molestation conviction, after the defendant determined during trial that the state had not informed the defendant of an additional interview conducted by the victim's counselor, the state did not violate the Georgia Reciprocal Discovery Act, O.C.G.A. § 17-16-4(a)(3)(a), by failing to provide this material because the defendant had not requested an in camera inspection of the confidential therapist's records as required by O.C.G.A. § 49-5-41. *Waters v. State*, 303 Ga. App. 187, 692 S.E.2d 802 (2010).

Defendant not entitled to MySpace.com records. — Trial court did not abuse the court's discretion in denying the defendant access to the incest victim's MySpace.com and school records because the defendant failed to show both the materiality and the favorable nature of the evidence sought. *Stephens v. State*, 305 Ga. App. 339, 699 S.E.2d 558 (2010).

Trial court did not err in failing to forward to the defendant the court's confidential file documents regarding two child molestation victims because the trial court's finding that the files contained no exculpatory evidence was alone sufficient, and the defendant made no showing that the material was exculpatory; a defendant who challenges a trial court's in camera inspection on appeal must show what information was suppressed and how that information was materially exculpatory. *Tidwell v. State*, 306 Ga. App. 307, 701 S.E.2d 920 (2010).

Criminal defendant should have received county child abuse documents. — Trial court erred by failing to provide the defendant with the county child abuse documents the defendant requested during the defendant's trial for child molestation, but the defendant was not denied due process since the defendant failed to show that the trial court withheld any material, exculpatory infor-

mation. *Dodd v. State*, 293 Ga. App. 816, 668 S.E.2d 311 (2008).

Burden on defendant to show need for release of records. — Trial court did not err by failing to release documents showing earlier child abuse from a child's file which might have been critical to a defendant's case since the burden was on the defendant to show what documents in a child's sealed file were suppressed and how those documents were materially exculpatory and the defendant failed to make the showing. *Dunagan v. State*, 255 Ga. App. 309, 565 S.E.2d 526 (2002).

Trial court may not delegate duty of reviewing records. — When a trial court subpoenas the records of the Georgia Department of Family and Children Services (DFACS) under the provisions of O.C.G.A. § 49-5-41 upon the court's finding that access to such records may be necessary, the court is required to undertake review of the records for potentially exculpatory material, and there is no statutory discretion enabling the trial court to relegate this duty to others because of their status as officers of the court; thus, after the trial court had subpoenaed the DFACS records under O.C.G.A. § 49-5-41 in the defendant's case, the trial court erred in failing to review the records in camera for exculpatory evidence and in having the prosecution undertake that review, but the error was harmless since the defendant acquiesced in the trial court's improper decision to delegate the court's duty of reviewing the records to the prosecution. *Pollard v. State*, 260 Ga. App. 540, 580 S.E.2d 337 (2003).

Nonprofit advocacy organization mandated under federal law to investigate incidents of abuse and neglect of individuals with mental illness should have been given reasonable access to confidential county and juvenile court records in connection with investigations relating to the organization's filing of a deprivation petition. *In re A.V.B.*, 222 Ga. App. 241, 474 S.E.2d 114 (1996).

Cited in *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987); *Pope v. State*, 197 Ga. App. 832, 399 S.E.2d 552 (1990); *Roberts v. State*, 229 Ga. App. 783, 494 S.E.2d 689 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Release of records to Department of Education hearing officers. — Those portions of child protective service records otherwise releasable to parents and guardians under Social Services County Letter No. 86-1 promulgated pursuant to federal court order in *J.J. v. Ledbetter*, C.A. No. CV180-84, U.S.D.C., S.D. Ga. (1985), may likewise be released to Department of Education hearing officers conducting hearings under the Education of All Handicapped Act, 20 U.S.C. § 1401

et seq., if, and only if, (1) the parents specifically request in writing that the Department of Human Resources forward the records to the hearing officer, or (2) the Department of Human Resources receives a written request for the records from the hearing officer personally and is subsequently able to secure the written permission of the parents to forward the records to the hearing officer. 1987 Op. Att’y Gen. No. 87-25.

49-5-41.1. Inspection and retention of records of juvenile drug use.

(a) Notwithstanding Code Section 49-5-40, all reports, files, and records of child controlled substance or marijuana abuse shall be open to inspection only upon order of the juvenile court. As used in this Code section, the term “juvenile court” means the court exercising jurisdiction over juvenile matters, as defined under Code Section 15-11-2, in the county where the report was made.

(b) The juvenile court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution the judge may deem proper and may punish by contempt any violation of those conditions. The judge shall permit authorized representatives of the Department of Human Services and the Council of Juvenile Court Judges to inspect and extract data from child controlled substance and marijuana abuse records for the purpose of obtaining statistics on juveniles and to make copies pursuant to the order of the court.

(c) In no case shall records of child controlled substance or marijuana abuse be retained by the Department of Human Services beyond the 24 months from the date a report is first received pursuant to Code Section 19-7-6 by a child welfare agency providing protective services.

(d) On application of a person who is the subject of a child controlled substance or marijuana abuse report, and after a hearing, the juvenile court may order the sealing of such reports, files, and records of the Department of Human Services. Upon entry of the order, the Department of Human Services shall treat the report and related information as if the report had never occurred. All index references shall be deleted and the person, the court, and the Department of Human Services shall properly reply that no record exists with respect to the person upon inquiry in any matter. Inspection of the sealed files and records

thereafter may be permitted by an order of the juvenile court upon petition by the person who is the subject of the records and only by those persons named in the order. (Code 1981, § 49-5-41.1, enacted by Ga. L. 1987, p. 1000, § 3; Ga. L. 2009, p. 453, § 2-2/HB 228.)

49-5-42. Rules and regulations.

The board may adopt rules and regulations not inconsistent with this article. (Ga. L. 1975, p. 1135, § 4.)

49-5-43. Article not to conflict with federal law or lose federal funds; duty of board.

Nothing in this article is intended to conflict with any provision of federal law or to result in the loss or denial of federal funds. The board shall adopt rules and regulations necessary to prevent conflict with federal law or the loss of federal funds. (Ga. L. 1975, p. 1135, § 5.)

49-5-44. Penalties for unauthorized access to records; use of records in public and criminal proceedings.

(a) Any person who authorizes or permits any person or agency not listed in Code Section 49-5-41 to have access to such records concerning reports of child abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor.

(b) Any person who knowingly and under false pretense obtains or attempts to obtain records or reports of child abuse declared confidential by Code Section 49-5-40 or information contained therein except as authorized in this article or Code Section 19-7-5 shall be guilty of a misdemeanor.

(c) Records made confidential by Code Section 49-5-40 and information obtained from such records may not be made a part of any record which is open to the public except that a district attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse. (Ga. L. 1975, p. 1135, § 3; Ga. L. 1990, p. 1778, § 3.)

49-5-45. Penalty for allowing unauthorized access to juvenile drug use records.

Any person who authorizes or permits any person or agency not authorized by the juvenile court pursuant to Code Section 49-5-41.1 to have access to such records concerning reports of child controlled substance or marijuana abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor. (Code 1981, § 49-5-45, enacted by Ga. L. 1987, p. 1000, § 4.)

49-5-46. Liability of department or agency.

The department or any agency and employees of either providing access to or disclosure of records or information as authorized by Code Section 49-5-41 shall have no civil or criminal liability therefor. (Code 1981, § 49-5-46, enacted by Ga. L. 1990, p. 1778, § 4.)

ARTICLE 3

EMPLOYEES' RECORDS CHECKS FOR DAY-CARE CENTERS

Administrative rules and regulations. — Schedule of fees for fingerprint records check, Official Compilation of the	Rules and Regulations of the State of Georgia, Department of Human Resources, Administration, Chapter 290-1-5.
--	--

RESEARCH REFERENCES

ALR. — Governmental liability for negligence in licensing, regulating, or super-	vising private day-care home in which child is injured, 68 ALR4th 266.
---	--

49-5-60. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) “Center” means a child welfare agency, as defined in subsection (a) of Code Section 49-5-12, which is required to be licensed or registered under Article 1 of this chapter.

(2) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) (For effective date, see note.) “Crime” means any felony; a violation of Code Section 16-5-23 when the victim is a minor; a violation of Code Section 16-12-1; a violation of Chapter 6 of Title 16, excluding the offenses of bigamy or marrying a bigamist; a violation of Code Section 16-4-1 when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(4) “Criminal record” means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16,

relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(5) “Director” means the chief administrative or executive officer of a facility.

(5.1) “Emergency temporary employee” means an employee other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired on an expedited basis to avoid noncompliance with staffing standards for centers required by law, rule, or regulation.

(6) “Employee” means any person, other than a director, employed by a center to perform at any of the center’s facilities any duties which involve personal contact between that person and any child being cared for at the facility and also includes any adult person who resides at the facility or who, with or without compensation, performs duties for the center which involve personal contact between that person and any child being cared for by the center.

(7) “Employment history” means a record of where a person has worked for the past ten years.

(8) “Facility” means a center’s real property at which children are received for care.

(9) “Fingerprint records check determination” means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(10) “Foster care home” means a private home used by a child-placing agency which has been approved by the child-placing agency to provide 24 hour care, lodging, supervision, and maintenance for no more than six children who are unrelated to the foster parent or parents.

(11) "Foster parent or parents" means the person or persons who provide care, lodging, supervision, and maintenance in a foster care home used by a child-placing agency.

(12) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(13) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(14) "License" means the document issued by the department to authorize the center to which it is issued to operate a facility under this chapter.

(14.1) "National fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a report from the Federal Bureau of Investigation after a search of bureau records and fingerprints.

(15) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(16) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(17) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(18) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(18.1) "State fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(19) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a

criminal record. (Code 1981, § 49-5-60, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1986, p. 822, § 2; Ga. L. 1987, p. 1416, § 1; Ga. L. 1988, p. 1605, § 1; Ga. L. 1992, p. 6, § 49; Ga. L. 1993, p. 757, § 1; Ga. L. 1999, p. 539, § 1; Ga. L. 1999, p. 574, § 3; Ga. L. 2004, p. 333, § 2; Ga. L. 2004, p. 645, § 10; Ga. L. 2009, p. 453, § 2-23/HB 228; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2013, p. 294, § 4-57/HB 242.)

Delayed effective date. — Paragraph (3), as set out above, becomes effective January 1, 2014. Until January 1, 2014, paragraph (3) reads as follows: “‘Crime’ means any felony; a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist; a violation of Code Section 16-4-1, relating to criminal attempt, when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.”

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (3). See editor’s note for extent of application. The second 2013 amendment, effective January 1, 2014, in paragraph (3), deleted “, relating to simple battery,” following “Code Section 16-5-23”, deleted “, relating to contributing to the delinquency of a minor” following “Code Section 16-12-1”, deleted “, relating to sexual offenses” following “Title 16”, and deleted “, relating to criminal attempt” following “Code Section 16-4-1”. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 141, § 54(f)/HB79, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (3) of this Code section by Ga. L. 2013, p. 141, § 49(6)/HB 79 will not be given effect in this Code section effective January 1, 2014.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For note on 1999 amendments to Code sections in this article, see 16 Ga. St. U.L. Rev. 227 (1999).

JUDICIAL DECISIONS

Supervisor of corporate child care institution was not foster parent. — Trial court erred in ruling that a supervisor of a corporate child care institution was a foster parent, and therefore a state employee for whose negligence the state

waived sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., in a wrongful death suit when a juvenile that the Georgia Department of Human Resources and the Georgia Department of Juvenile Justice

placed in the corporate child care institution was accidentally killed. Ga. Dep't of Human Res. v. Johnson, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

Cited in Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004); Coleman v. State, 308 Ga. App. 731, 708 S.E.2d 638 (2011).

49-5-61. Requirement of separate license and separate director for each new facility.

An applicant for a new license shall have a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility. (Code 1981, § 49-5-61, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 2004, p. 645, § 11.)

49-5-62. Records check application for director of new facility; preliminary records check for employees.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and a satisfactory preliminary records check for each employee of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received satisfactory state and national fingerprint records check determinations and each employee received a satisfactory preliminary records check determination, or that any employee other than the director whose preliminary records check revealed a criminal record of any kind has either subsequently received satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. The department may either perform preliminary records checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to GCIC information to have those agencies perform for the department a preliminary records check for each preliminary records check application submitted thereto by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing preliminary records checks. (Code 1981, § 49-5-62, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1999, p. 539, § 2; Ga. L. 1999, p. 574, § 4.)

49-5-63. Notice of determination; issue of license; effect of unsatisfactory determination.

After being furnished the required records check application under Code Section 49-5-62, the department shall notify in writing the license applicant as to each person for whom an application was received

regarding whether the department's determination as to that person's state fingerprint records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to each employee of an applicant's facility and the state fingerprint records check was satisfactory as to the director, that applicant may be issued a license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the state or national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 49-5-62 and this Code section to obtain state and national fingerprint records checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. If the determination was unsatisfactory as to any employee of an applicant's facility, the applicant shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Any employee other than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 49-5-69. (Code 1981, § 49-5-63, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1986, p. 10, § 49; Ga. L. 1987, p. 1416, § 2; Ga. L. 1999, p. 539, § 3; Ga. L. 1999, p. 574, § 5.)

49-5-64. Fingerprint records check.

The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the state fingerprint records check or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a national fingerprint records determination. (Code 1981, § 49-5-64, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 3; Ga. L. 1999, p. 539, § 4; Ga. L. 1999, p. 574, § 6.)

49-5-65. Determination on the basis of fingerprint records check; revocation of license.

After receiving a Federal Bureau of Investigation report regarding a national fingerprint records check under Code Section 49-5-64, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, after receiving notification of that determination, that applicant shall designate another director for such facility for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination and proceed under the requirements of Code Sections 49-5-62 through 49-5-64 and this Code section to obtain state and national fingerprint records check determinations for the newly designated director. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. The department may revoke the license of that facility if the facility fails to comply with the requirements of this Code section and Code Section 49-5-63 to receive satisfactory state and national fingerprint determinations on the director or to comply with Code Section 49-5-63 regarding employees other than the director. (Code 1981, § 49-5-65, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 4; Ga. L. 1999, p. 539, § 5; Ga. L. 1999, p. 574, § 7.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in the second sentence "49-5-64 and this Code section" was substituted for "49-5-65".

49-5-65.1. Employment of persons who have entered plea of guilty or nolo contendere to specified offenses.

Repealed by Ga. L. 2004, p. 645, § 12, effective October 1, 2004.

Editor's notes. — This Code section was based on Code 1981, § 49-5-65.1, enacted by Ga. L. 1997, p. 713, § 2.

49-5-66. Separate license and center.

Each center shall be required to obtain a separate license and shall have a separate director for each center. (Code 1981, § 49-5-66, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 5; Ga. L. 1999, p. 539, § 6; Ga. L. 1999, p. 574, § 8.)

49-5-67. Fingerprint records check application for director of existing facility; preliminary records check for employees; annual license.

As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees, foster parents, and adults residing in a foster care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee, or foster parent or other adult residing in the foster care home, and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center's file and available for inspection by the department. This satisfactory determination must be made before the employee or foster parent begins any duties for the center. However, where there is an urgent need for an emergency temporary employee to work at a center's facility in order to avoid immediate noncompliance with staffing requirements, such center may utilize the applicant as an emergency temporary employee after applying for the preliminary records check through the local law enforcement agency and completing the affidavit. In such emergency situations, the director of the center must complete an affidavit, with all supporting documentation attached thereto, stating that the GCIC information has been requested through an identified local law enforcement agency and that the results were not immediately available to the center prior to assigning the employee to work with children at the center's facility in order to avoid immediate noncompliance with staffing ratios. The affidavit with supporting documentation must be maintained in the center's file on the individual and available to the department for inspection. The director shall review the GCIC information upon receipt, but in no case shall an emergency temporary employee be permitted to continue working for more than three days without having a satisfactory determination made by the director and entered into the center's file on the employee with all supporting documentation. The department shall promulgate rules and regulations limiting the extent to which centers are authorized to use emergency temporary employees in accordance with this Code section. Foster parents and adults residing in a foster care home utilized by child-placing agencies shall never be utilized as emergency temporary employees of the child-placing agency. Employees, emergency temporary employees, foster parents, and other adults required to have records checks who are utilized by centers are subject to all other requirements set forth in this article. Where the department has reason to question the validity of the GCIC information or the satisfac-

tory determination made by the center, the department may require the employee, emergency temporary employee, foster parent, or other adult to submit a preliminary criminal records check application through the department together with appropriate fees. (Code 1981, § 45-5-67, enacted by Ga. L. 1999, p. 539, § 7; Ga. L. 1999, p. 574, § 9; Ga. L. 2004, p. 333, § 3; Ga. L. 2004, p. 645, § 13.)

Editor's notes. — Former Code Section 49-5-67 (Ga. L. 1984, p. 1397, § 1 and Ga. L. 1985, p. 963, § 1), relating to fingerprint records check, was repealed by Ga. L. 1987, p. 1416, § 6, effective July 1, 1987.

49-5-68. Change of director.

(a) If the director of a facility which has been issued a license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or any fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own records as to whether satisfactory or unsatisfactory preliminary or state and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or state or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director's facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary or state or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there have been no state and national fingerprint records check determinations regarding the newly designated director within

the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the fingerprint records check application of the newly designated director after the date the notification is sent by the department or the license of that facility shall be indefinitely suspended or revoked. If that fingerprint records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director; and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint records check determination for that director as provided in Code Sections 49-5-64 and 49-5-65. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If that determination is satisfactory, the center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply. (Code 1981, § 49-5-69, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-68, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 7; Ga. L. 1999, p. 539, § 8; Ga. L. 1999, p. 574, § 10.)

Editor's notes. — Former Code Section 49-5-68, as enacted by Ga. L. 1984, p. 1397, § 1, relating to requirement that director of a facility not be subjected to more than one fingerprint check during

his tenure, was repealed by Ga. L. 1985, p. 963, § 1, effective July 1, 1985.

Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-69 as this Code section.

49-5-69. Employment requirements; suspension or revocation of license or criminal penalty for violations.

(a) Before a person may become an employee other than a director of any center after that center has received a license, that center shall require that person to obtain a satisfactory preliminary records check. The center shall maintain documentation in the employee's personnel file, which is available to the department upon request, which reflects that a satisfactory preliminary criminal records check was received before the employee began working with children. If the preliminary records check for any potential employee other than the director reveals a criminal record of any kind, such potential employee shall not be

allowed to begin working until either such potential employee has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory preliminary or fingerprint records check determination reversed in accordance with Code Section 49-5-73. If either the preliminary or state or national fingerprint records determination is unsatisfactory, the center shall, after receiving notification of the determination, take such steps as are necessary so that such person is no longer an employee. Any potential employee other than the director who receives a satisfactory preliminary records check determination shall not be required to obtain a fingerprint records check determination except as permitted in accordance with subsection (c) of this Code section.

(b) A license is subject to suspension or revocation and the department may refuse to issue a license if a director or employee does not undergo the records and fingerprint checks applicable to that director or employee and receive satisfactory determinations.

(c) After the issuance of a license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, when the department has reason to believe the employee has a criminal record that renders the employee ineligible to have contact with children in the center, or during the course of a child abuse investigation involving the director or employee.

(d) No center may hire any person as an employee unless there is on file in the center an employment history and a satisfactory preliminary records check or, if the preliminary records check determination revealed a criminal record of any kind as to such person, either satisfactory state and satisfactory national records check determinations for that person or proof that an unsatisfactory determination has been reversed in accordance with Code Section 49-5-73.

(e) A director of a facility having an employee whom that director knows or should reasonably know to have a criminal record that renders the employee ineligible to have contact with children in the center shall be guilty of a misdemeanor. (Code 1981, § 49-5-70, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-69, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 8; Ga. L. 1999, p. 539, § 9; Ga. L. 1999, p. 574, § 11; Ga. L. 2004, p. 645, § 14; Ga. L. 2006, p. 72, § 49/SB 465.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-69 as Code Section 49-5-68.

Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-70 as this Code section.

49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; violations; foster parents known to have criminal records.

(a) No licensed child welfare agency, as defined in subsection (a) of Code Section 49-5-12, shall place a child in a foster care home unless the foster parent or parents of the home and other adult persons that reside in the home or provide care to children placed in the home have received a satisfactory preliminary records check determination. Additionally, no child shall continue to be placed in such foster care home unless the foster parent or parents also subsequently receive a satisfactory fingerprint records check determination. A child welfare agency or any applicant for a license for such an agency shall be required to submit to the department a preliminary records check application and a records check application for the foster parent or parents of any foster care home used by the agency and a preliminary records check application for any other adult persons that reside in the home or provide care to children placed in the home. In lieu of such applications, the agency or license applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months such foster parent or parents or other adult persons have received a satisfactory fingerprint records check determination or a satisfactory preliminary records check determination.

(b) After receiving or obtaining the fingerprint records check determinations or the preliminary records check determinations, the department shall notify in writing the agency or license applicant as to each person for whom an application was received regarding whether the department's determinations were satisfactory or unsatisfactory. If any such determinations are unsatisfactory, such homes shall not be used by the child welfare agency as foster care homes.

(c) The department shall have the authority to take any of the actions enumerated in subsection (c) of Code Section 49-2-17 if a licensed child welfare agency or an applicant for such a license violates any provision of this Code section.

(d) An executive director of a child welfare agency that uses a foster care home with a foster parent or parents or other adult persons referenced in this Code section whom the executive director knows or should reasonably know to have a criminal record shall be guilty of a misdemeanor.

(e) In addition to any other requirement established by law, the submission of fingerprints shall be a prerequisite to the issuance of a license or authorization for the operation of a foster home or to serve as foster parents as provided in this article. Such fingerprints shall be used for the purposes of fingerprint checks by the Georgia Crime

Information Center and the Federal Bureau of Investigation. (Code 1981, § 49-5-69.1, enacted by Ga. L. 1993, p. 757, § 2; Ga. L. 1994, p. 409, § 2; Ga. L. 1999, p. 539, § 10; Ga. L. 2009, p. 453, § 2-24/HB 228.)

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 258 (1994).

49-5-70. Required cooperation among state agencies; unauthorized use of criminal history record information.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this chapter and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this chapter, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 49-5-71, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-70, as redesignated by Ga. L. 1985, p. 963, § 1.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, had the effect of redesignating former Code Section 49-5-70 as Code Section 49-5-69.

Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-71 as this Code section.

49-5-71. Immunity from liability for centers, state agencies, and employees.

(a) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A center or a child-placing agency, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article. (Code 1981, § 49-5-72, enacted by Ga. L. 1984, p.

1397, § 1; Code 1981, § 49-5-71, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1993, p. 757, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was inserted following “director” in subsection (b).

Editor’s notes. — Ga. L. 1985, p. 963,

§ 1, redesignated former Code Section 49-5-71 as Code Section 49-5-70 and former Code Section 49-5-72 as this Code section.

49-5-72. Supplemental nature of article’s requirements.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter. (Code 1981, § 49-5-73, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-72, as redesignated by Ga. L. 1985, p. 963, § 1.)

Editor’s notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-72 as Code Section 49-5-71 and for-

mer Code Section 49-5-73 as this Code section.

49-5-73. Applicability of “Georgia Administrative Procedure Act”; consideration of matters in mitigation of conviction.

A determination by the department regarding preliminary or fingerprint records checks under this article, or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his discretion, consider matters in mitigation of any conviction, provided the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be appropriate, he will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this title. If objections are made, the hearing officer will take such objections into consideration in considering the case. (Code 1981, § 49-5-74,

enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-73, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1988, p. 1605, § 2.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-73 as Code Section 49-5-72 and former Code Section 49-5-74 as this Code section.

49-5-74. Administration of article.

The department is authorized to provide by regulation for the administration of this article. (Code 1981, § 49-5-74, enacted by Ga. L. 1985, p. 963, § 1.)

Editor's notes. — Former Code Section 49-5-74 was redesignated as Code Section 49-5-73 by Ga. L. 1985, p. 963, § 1.

ARTICLE 4

EMERGENCY PROTECTION OF CHILDREN IN CERTAIN INSTITUTIONS

Code Commission notes. — Ga. L. 1986, p. 662, § 1 and Ga. L. 1986, p. 669, § 1 both enacted an Article 4 of Chapter 5 of Title 49. Pursuant to Code Section 28-9-5, in 1986, the article enacted by the latter Act was redesignated as Article 5 of this chapter and the Code sections in that article, which were enacted as Code Sections 49-5-90 through 49-5-94, were redesignated as Code Sections 49-5-110 through 49-5-114, respectively.

49-5-90. Definitions.

As used in this article, the term:

(1) "Child in care" means any person under the age of 17 years who has been admitted to, is cared for, or resides in a facility.

(2) "Commissioner" means the commissioner of human services or his designee.

(3) "Corrective order" means an order by the commissioner detailing the findings of the commissioner or his designee regarding violations of law or rules or regulations of the department by an institution or other conditions threatening the health and safety of residents of the institution and the changes which the commissioner has ordered.

(4) "Department" means the Department of Human Services.

(5) "Emergency order" or "order" means a written directive by the commissioner or his designee ordering the emergency relocation of residents, prohibiting admissions, or placing a monitor in a facility.

(6) "Guardian" means a minor's parent, legal guardian, or conservator.

(7) “Facility” means a child-caring institution or child welfare agency subject to licensure under the provisions of Article 1 of this chapter, unless specifically exempted by the rules and regulations.

(8) “Monitor” means a person, designated by the department, to remain on-site in a facility, as an agent of the department, observing conditions.

(9) “Preliminary hearing” means a hearing held by the department as soon as possible after the order is entered at the request of a facility which has been affected by an emergency order placing a monitor in the facility, relocating residents, or prohibiting admissions in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 49-5-90, enacted by Ga. L. 1986, p. 662, § 1; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228.)

49-5-91. Emergency orders; corrective orders; monitors.

(a) Emergency orders may be issued by the commissioner or his designee pursuant to findings by the department pursuant to surveys, inspections, or investigations, which are required or permitted by law, that departmental rules and regulations are being violated which threaten the health, safety, or welfare of children in care.

(b)(1)(A) The commissioner may order the emergency relocation of residents from a child-caring institution other than a day-care facility subject to licensure under this chapter when the commissioner has determined that the residents are subject to an imminent and substantial danger.

(B) When an order is issued under this subsection, the commissioner shall provide for:

(i) Notice to the resident, his next of kin or guardian, and, where appropriate, his physician, of the emergency relocation and the reasons therefor;

(ii) Relocation to the nearest appropriate child-caring institution; and

(iii) Other protection designed to ensure the welfare and, when possible, the desires of the resident and his next of kin or guardian.

(2)(A) The commissioner or his designee may order the emergency placement of a monitor or monitors in a facility upon a finding that department rules and regulations are being violated which threaten the health, safety, or welfare of children in care and when one or more of the following conditions are present:

(i) The facility is operating without a permit;

(ii) The department has denied application for permit or has initiated action to revoke the existing permit of the facility; or

(iii) Children are suspected of being subjected to injury or life-threatening situations or the health or safety of the child or children is in danger.

(B) A monitor may be placed in a facility for no more than ten consecutive calendar days, during which time the monitor shall observe conditions and regulatory compliance with any recommended remedial action of the department. Upon expiration of the ten-day period, should the conditions warrant, the initial ten-day period may be extended for an additional ten-day period. The monitor shall report to the department. The monitor shall not assume any administrative responsibility within the facility, nor shall the monitor be liable for any actions of the facility. The salary and related costs and travel and subsistence allowance as defined by department policy of placing a monitor in a facility shall be reimbursed to the department by the facility, unless the order placing the monitor is determined to be invalid in a contested case or by final adjudication by a court of competent jurisdiction, in which event the cost shall be paid by the department.

(3)(A) The commissioner may order the emergency prohibition of admissions to a child-caring institution other than a day-care facility subject to licensure under this chapter when residents of an institution are in imminent and substantial danger or the institution has failed to correct a violation of departmental permit rules or regulations within a reasonable period of time, as specified in the department's corrective order, and the violation:

(i) Could jeopardize the health and safety of the residents in the institution if allowed to remain uncorrected; or

(ii) Is a repeat violation over a 12 month period.

(B) Admission to an institution may be suspended until the violation has been corrected or until the department has determined that the institution has undertaken the action necessary to effect correction of the violation.

(c) An emergency order shall contain the following:

(1) The scope of the order;

(2) The reasons for the issuance of the order;

(3) The effective date of the order if other than the date the order is issued;

(4) The person to whom questions regarding the order are to be addressed; and

(5) Notice of the right to a preliminary hearing.

(d) Unless otherwise provided in the order, an emergency order shall become effective upon its service. Service of an emergency order may be made upon the owner of the facility, the director of the facility, or any other agent, employee, or person in charge of the facility at the time of the service of the order.

(e) Prior to issuing an emergency order to order the emergency relocation of residents, to prohibit admissions, or to require placement of a monitor in a facility which has been classified by the department as a child-caring institution or child welfare agency, the commissioner or his designee may consult with persons knowledgeable in the field of child care and a representative of the facility to determine if there is a potential for greater adverse effects on children in care as a result of the emergency order. (Code 1981, § 49-5-91, enacted by Ga. L. 1986, p. 662, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “situations” was substituted for “situation” in division (b)(2)(A)(iii).

49-5-92. Preliminary hearing; department order; interim department actions.

(a) A request for a preliminary hearing shall be made in writing within five days from the time of service, excepting weekends. The request must be made to the representative of the department designated in the order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written evidence submitted by the institution affected, and a preliminary written argument in support of its contentions.

(b) If a request is made to appear in person at the preliminary hearing, the institution shall provide the name and address of the person or persons, if any, who will be representing the institution in the preliminary hearing.

(c) Upon receipt of a request for a preliminary hearing, the department shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held as soon as possible after a request therefor but in no event later than 72 hours after such request, provided that an institution may request that such hearing be held earlier; provided, however, that in no event will a hearing be held on a weekend or holiday.

(d) If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record, any additional

evidence introduced at the hearing, and any arguments made. A recording shall be made of the hearing.

(e) The department shall, where practicable, issue an immediate oral order and shall, in all instances, issue a written order within four business days after the close of the hearing.

(f) Pending final appeal of the validity of any emergency order issued as provided in this Code section, such emergency order shall remain in full effect until vacated or rescinded by the commissioner or his designee.

(g) The department is not precluded from other actions permitted by other laws or regulations during the time an emergency order is in force. (Code 1981, § 49-5-92, enacted by Ga. L. 1986, p. 662, § 1.)

ARTICLE 5

RECORDS CHECKS FOR PERSONS SUPERVISING CHILDREN

Code Commission notes. — Ga. L. 1986, p. 662, § 1 and Ga. L. 1986, p. 669, § 1 both enacted an Article 4 of Chapter 5 of Title 49. Pursuant to Code Section 28-9-5, in 1986, the article enacted by the latter Act was redesignated as Article 5 of this chapter and the Code sections in this article, which were enacted as Code Sections 49-5-90 through 49-5-94, were redesignated as Code Sections 49-5-110 through 49-5-114, respectively.

49-5-110. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty.

(2) (For effective date, see note.) “Crime” means a violation of Code Section 16-5-23 when the victim is a minor; a violation of Code Section 16-5-24 when the victim is a minor; a violation of Code Section 16-5-70; a violation of Code Section 16-12-1; a violation of Chapter 6 of Title 16, excluding the offenses of bigamy or marrying a bigamist; a felony violation of Chapter 13 of Title 16; a violation of Code Section 16-5-1; a violation of Code Section 16-4-1 as it concerns attempted murder; or any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be one of the enumerated crimes listed in this paragraph.

(3) “Criminal record” means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this subparagraph shall not apply

to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) “Employer” means any person, organization, corporation, or political subdivision which employs or uses the services of paid employees or volunteers in positions in which the employee or volunteer has supervisory or disciplinary power over a child or children.

(5) “GCIC” means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) “GCIC information” means criminal history record information as defined in Code Section 35-3-30.

(7) “Records check” means a records check comparison of GCIC information.

(8) “Records check application” means a set of classifiable fingerprints, a records search fee in an amount to be determined by the Georgia Bureau of Investigation to cover the reasonable cost of such records check, payable in such form as the GCIC may direct to cover the cost of a records check under this article, and an affidavit by the applicant consenting to a records check and disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state. (Code 1981, § 49-5-110, enacted by Ga. L. 1986, p. 669, § 1; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2013, p. 294, § 4-58/HB 242.)

Delayed effective date. — Paragraph (2), as set out above, becomes effective January 1, 2014. Until January 1, 2014, paragraph (2) reads as follows: “(2) ‘Crime’ means a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-5-24, relating to aggravated battery, when the victim is a minor; a violation of Code Section 16-5-70, relating to cruelty to children; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses, excluding the offenses of bigamy

or marrying a bigamist; a felony violation of Chapter 13 of Title 16, relating to controlled substances; a violation of Code Section 16-5-1, relating to murder and felony murder; a violation of Code Section 16-4-1, relating to criminal attempt, as it concerns attempted murder; or any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be one of the enumerated crimes listed in this paragraph.”

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in

paragraph (2). See editor's note for extent of application. The second 2013 amendment, effective January 1, 2014, in paragraph (2), deleted “, relating to simple battery,” following “Code Section 16-5-23”, deleted “, relating to aggravated battery,” following “Code Section 16-5-24”, deleted “, relating to cruelty to children” following “Code Section 16-5-70”, deleted “, relating to contributing to the delinquency of a minor” following “Code Section 16-12-1”, deleted “, relating to sexual offenses” following “Chapter 6 of Title 16”, deleted “, relating to controlled substances” following “Chapter 13 of Title 16” deleted “, relating to murder and felony murder” following “Code Section 16-5-1”, and deleted “, relating to criminal attempt” following “Code Section 16-4-1”. See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 141, § 54(f)/HB79, not codified by the General Assembly, provides: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the pro-

vision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (2) of this Code section by Ga. L. 2013, p. 141, § 49(7)/HB 79 will not be given effect in this Code section effective January 1, 2014.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-5-111. Employers authorized to make records checks; procedure.

(a) On and after July 1, 1986, an employer may require that a new or current employee or volunteer submit to a records check for the purpose of determining whether such person has ever been convicted of a crime or has a criminal record.

(b) An employer seeking a records check on an employee shall submit a records check application to the GCIC. Upon receipt thereof, the GCIC shall promptly conduct a search of its records and records to which it has access. Within a reasonable time after receiving the application, the GCIC shall notify the employer in writing of any criminal record finding or of the fact of no such finding. (Code 1981, § 49-5-111, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-112. Cooperation of law enforcement agencies; penalty for false information.

(a) The GCIC and law enforcement agencies which have access to GCIC information shall cooperate with employers who are authorized to obtain records checks on their employees in performing such checks and shall provide such information for such records checks notwith-

standing any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this article, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 49-5-112, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-113. Personal liability; disciplinary action.

(a) Other than for a knowing and malicious release of false information, neither GCIC, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article. However, no employee shall be suspended or dismissed from such employee's job due to any information provided in a records check until the employer obtains a certified copy of the original documents on which the charges identified in the records check are based.

(b) An employer shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the provisions of this article. Any disciplinary action of any kind taken against any local school board employee and based in whole or in part on information obtained through a records check as provided in this article shall be subject to and governed by the provisions of Code Section 20-2-940. (Code 1981, § 49-5-113, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-114. Other laws requiring records checks.

This article shall be cumulative of and in addition to any other law requiring or permitting employees' records checks and shall not relieve any person from any duty or requirement under such other laws. (Code 1981, § 49-5-114, enacted by Ga. L. 1986, p. 669, § 1.)

ARTICLE 6

PROGRAMS AND PROTECTION FOR CHILDREN

PART 1

GOVERNOR'S OFFICE FOR CHILDREN AND FAMILIES

Editor's notes. — Ga. L. 2008, p. 568, § 9/HB 1054, effective July 1, 2008, repealed the Code sections formerly codified at this part and enacted the current part. The former part consisted of Code Sections 49-5-130 through 49-5-135, relating to general provisions regarding programs and protection for children, and was based on Ga. L. 1987, p. 1576, § 1; Ga. L. 1990, p. 1871, § 2; Ga. L. 1991, p. 435, §§ 2-7; Ga. L. 1992, p. 1983, § 32; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 20, § 28; Ga. L. 2000, p. 1098, § 1; Ga. L. 2001, p. 312, § 1.

Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years

have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Cross references. — Child abuse and neglect prevention, T. 19, C. 14.

49-5-130. Legislative findings and intent.

The General Assembly finds and declares:

(1) That the future of this state depends on our supporting and nurturing the creation and development of strong, safe, stable, and successful families. Therefore, the General Assembly is committed to ensuring the provision of appropriate services to children, youth, and families. The intent of this article is to provide for the effective coordination and communication between providers of prevention and early intervention services for children and youth and juvenile justice and child welfare systems at all levels of state government;

(2) That consolidating multiple child welfare and juvenile justice funding and policy agencies into a single agency with authority to address the needs of at-risk children from birth through adolescence will create a more unified, consistent approach to addressing the needs of our state's children and youth; and

(3) Its intent to reduce the number of children committed by the courts to institutions operated by the Department of Juvenile Justice

and the Department of Human Services or other state agencies and to provide a preventive, comprehensive plan for the development of community based alternatives so that children who have committed delinquent acts and children who are at risk of becoming dependents of state government and its institutions may not have to be committed to a state detention facility or other such facility. Additionally, it is the intent of this part to provide for noninstitutional disposition options in any case before the juvenile court where such disposition is deemed to be in the best interest of the child and of the community. (Code 1981, § 49-5-130, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (3).

49-5-131. (For effective date, see note.) Definitions.

As used in this part, the term:

(1) “Board” means the advisory board to the Governor’s Office for Children and Families created pursuant to Code Section 49-5-134.

(2) (For effective date, see note.) “Child” means a person under the age of 17 years who is alleged to have committed a delinquent act or a person under the age of 18 years who is alleged to be a dependent child or is alleged to be a child in need of services as those terms are defined by Code Section 15-11-2.

(3) “Director” means the executive director of the Governor’s Office for Children and Families.

(4) “Fund” means the Children’s Trust Fund created pursuant to Code Section 19-14-20.

(5) “Neglect” means harm to a child’s health or welfare by a person responsible for the child’s health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(6) “Office” means the Governor’s Office for Children and Families created pursuant to Code Section 49-5-132.

(7) “Prevention program” means a system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian and may include research or educational programs related to prevention of child abuse and neglect. (Code 1981, § 49-5-131, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2013, p. 294, § 4-59/HB 242.)

Delayed effective date. — Paragraph (2), as set out above, becomes effective January 1, 2014. For version of paragraph (2) in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, in paragraph (2), inserted “who is alleged to have committed a delinquent act” near the beginning, and substituted “be a dependent child or is alleged to be a child in need of services” for “be deprived or is alleged to be a status offender” near the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 24, § 5-1/HB 242, not codified by the General

Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-5-132. Governor’s Office for Children and Families established; funding; duties and responsibilities.

(a) There is established the Governor’s Office for Children and Families which shall be assigned to the Office of Planning and Budget for administrative purposes.

(b) The office shall be the successor entity to the Children and Youth Coordinating Council and to the Children’s Trust Fund Commission and shall assume the continuing responsibilities, duties, rights, staff, contracts, debts, liabilities, and authorities of those bodies, any law to the contrary notwithstanding.

(c) The office may accept federal funds granted by Congress or executive order for the purposes of the fund as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit in the fund to be disbursed as other moneys in such fund.

(d) The office is further vested with authority to carry out the following duties and responsibilities in consultation with the board:

(1) To carry out the prevention and community based service programs as provided for in Part 2 of this article;

(2) To carry out the duties relating to mentoring as provided for in Part 3 of this article;

(3) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this article;

(4) To prepare, publish in print or electronically, and disseminate fundamental child related information of a descriptive and analytical nature to all components of the children's service system of this state, including, but not limited to, the juvenile justice system;

(5) To serve as a state-wide clearing-house for child related information and research;

(6) In coordination and cooperation with all components of the children's service systems of this state, to develop legislative proposals and executive policy proposals reflective of the priorities of the entire child related systems of this state, including, but not limited to, child abuse injury prevention, treatment, and juvenile justice systems;

(7) To serve in an advisory capacity to the Governor on issues impacting the children's service systems of this state;

(8) To coordinate high visibility child related research projects and studies with a state-wide impact when those studies and projects cross traditional system component lines;

(9) To provide for the interaction, communication, and coordination of all components of the children's service systems of this state and to provide assistance in establishing state-wide goals and standards in the system;

(10) To provide for the effective coordination and communication between providers of children and youth services, including pediatrics, health, mental health, business and industry, and all components of social services, education, and educational services;

(11) To encourage and facilitate the establishment of local commissions or coalitions on children and youth and to facilitate the involvement of communities in providing services for their children and youth;

(12) To review and develop an integrated state plan for services provided to children and youth in this state through state programs;

(13) To provide technical assistance and consultation to members of the council and local governments, particularly those involved in providing services to their children and youth;

(14) To facilitate elimination of unnecessary or duplicative efforts, programs, and services; and

(15) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Code 1981, § 49-5-132, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Office of Planning and Budget” for “Governor’s Office of Planning and Budget” in subsection (a).

49-5-133. Executive director; cooperation with Office of the Child Advocate for the Protection of Children.

(a) There shall be an executive director of the office who shall be appointed by and serve at the pleasure of the Governor.

(b) The director may contract with other agencies, public or private, or persons as the director deems necessary for the rendering and affording of such services, facilities, studies, research, and reports as will best enable the office to carry out its functions, responsibilities, and duties under this article. The director is specifically authorized to enter into cooperative contracts for the sharing of staff expertise and personnel with the Office of the Child Advocate for the Protection of Children. (Code 1981, § 49-5-133, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

49-5-134. Advisory board established; membership; officers and committees; compensation.

(a) There is established an advisory board to the office which shall consist of at least 15 members appointed by the Governor who as a group have training, experience, or special knowledge concerning the prevention and treatment of child abuse and neglect, emotional disability, foster care, teenage pregnancy, juvenile delinquency, law enforcement, pediatrics, health care, drug treatment and rehabilitation, early childhood, primary and secondary education, or the administration of juvenile justice.

(b) At least one-fifth of the members of the advisory board shall be under the age of 24 at the time of their appointment, and at least three members shall have been or shall currently be under the jurisdiction of the juvenile justice system or the foster care system. A single member may fulfill both of the above requirements.

(c) Membership on the advisory board does not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The advisory board shall elect a chairperson from among its membership. The advisory board may elect such other officers and committees as it considers appropriate.

(e) Members shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other

expenses necessarily incurred through service on the advisory board, in compliance with travel rules and regulations. However, in no case shall a member of the advisory board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency. (Code 1981, § 49-5-134, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

49-5-135. Powers and duties of advisory board; disbursement of appropriated moneys from fund.

(a) The advisory board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The advisory board shall also meet on the call of the chairperson, the director, or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) In consultation with the office, establish criteria for determining eligibility for receipt of disbursements from the fund;

(5) Review applications for disbursements of available money from the fund for child abuse and neglect prevention purposes;

(6) In consultation with the office, administer federal assistance funds for the purposes mentioned in this article, including but not limited to funds under the Juvenile Justice and Delinquency Prevention Act;

(7) Maintain records of all expenditures of the funds received as gifts and donations, and disbursements made, from the fund and from other state and federal funds;

(8) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50;

(9) Using the combined expertise and experience of its members, provide regular advice and counsel to the director to enable the office to carry out its statutory duties under this article; and

(10) Carry out such duties of the office as may be required by federal law or regulation so as to enable the state to receive and disburse federal funds for child abuse prevention and treatment and juvenile delinquency prevention and treatment.

(b) The advisory board may authorize the disbursement of available money from the fund after appropriation thereof to an entity or program eligible pursuant to the criteria of the office exclusively to fund a private nonprofit or public organization in the development or operation of a prevention program if all of the following conditions are met:

(1) The organization demonstrates broad based community involvement emphasizing volunteer efforts and demonstrates expertise in child abuse prevention issues;

(2) The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance; and

(3) Other conditions that the board may deem appropriate.

(c) Funds shall not be disbursed from the trust fund to any organization or other entity or for any purpose authorized in subsection (a) of this Code section until approved by the Governor; provided, however, that the Governor may not authorize the disbursement of funds to an organization or other entity which the office has not recommended for a grant. (Code 1981, § 49-5-135, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

U.S. Code. — The Juvenile Justice and Delinquency Prevention Act, referred to in paragraph (a)(6), is codified principally at 42 U.S.C. § 5601 et seq.

PART 2

DELINQUENCY PREVENTION AND COMMUNITY BASED SERVICES

Administrative rules and regulations. — Title V Prevention, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Programs, Grants of Children and Youth Coordinating Council, § 96-1-.02.

Law reviews. — For note on 1991 amendment of this part, see 8 Ga. St. U.L. Rev. 21 (1992).

49-5-150. Legislative policy and intent.

The policy and intent of the General Assembly in delinquency and other child related problems and community based services can be summarized as follows:

(1) Such programs should be planned and organized at the community level within the state, and such planning efforts should include appropriate representation from local government, local agencies serving families and children, both public and private, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The role of the state should be to provide technical assistance, access to funding, program information, and assistance to local leadership in appropriate planning;

(2) When a child is adjudicated to be within the jurisdiction of the juvenile court or other state agencies, such child should be carefully evaluated through the available community-level resources including

a comprehensive team of mental health providers, social services providers, public health and other available medical providers, public schools, and others, as appropriate, prior to the juvenile hearing dealing with disposition so that the disposition of the court may be made with an understanding of the needs of the child and after consideration of the resources available to meet those needs;

(3) It is contrary to the policy of the state for a court to separate a child from his or her own family or commit a child to an institution without a careful evaluation of the needs of the child;

(4) The General Assembly finds that state and local government should be responsive to the need for community based services which would provide an alternative to commitment to an institution. The General Assembly intends that state government should be responsive to this need through the council by helping public and private local groups to plan, develop, and fund community based programs, both residential and nonresidential;

(5) It is the intent of the General Assembly that the council develop a funding mechanism that will provide state support for programs that meet the standards developed under the provisions of this part. (Code 1981, § 49-5-150, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 8.)

49-5-151. Implementation of part.

It shall be the duty of the council to arrange for the implementation of this part as follows:

(1) To assist local governments and private service agencies in the development of community based programs and to provide information on the availability of potential funding sources and to provide whatever assistance may be requested in making application for needed funding;

(2) To approve yearly program evaluations and to make recommendations to the General Assembly concerning continuation funding that might be supported by that evaluation;

(3) To approve program evaluation standards by which all programs developed under the provisions of this part may be objectively evaluated. Such standards as may be developed for the purpose of program evaluation shall be in addition to any current standards as may be applicable under the existing authority of the department. Minimum operating standards as well as program evaluation standards as may be needed for new program models designed to fulfill the intent of this part may be developed at the discretion of the council;

(4) To develop a formula for funding on a matching basis community based services as provided for in this part. This formula may be based upon a county's or counties' relative ability to fund community based programs for children and youth. Local governments receiving state matching funds for programs under the provisions of this part must maintain the same overall level of effort that existed at the time of the filing of the county assessment of youth needs with the council;

(5) To provide yearly program evaluation of the effectiveness of delinquency and other prevention programs and community based services developed or supported under provisions of this part;

(6) To develop a program to coordinate the resources of state government within the appropriate departments to provide technical assistance to local areas within the state to assist them in planning delinquency and other prevention programs and community based services for youth, including but not limited to the following:

(A) Study local youth needs;

(B) Gather data on children within the jurisdiction of the state systems;

(C) Evaluate resources for providing services or care to these children;

(D) Provide information about various program models which might be appropriate in relation to the needs of children and youth;

(E) Help in planning for evaluation; and

(F) Provide such other assistance as may be appropriate;

(7) To encourage the development of delinquency and other prevention programs and community based services by private groups so that:

(A) Such programs can be responsive to local needs;

(B) Local leadership and private groups can be responsible for their programs;

(C) Programs which meet state standards can be assisted by state and federal funding; and

(D) Available private funds can be appropriately utilized along with available state and federal funds;

(8) To provide for the development of programs which have a plan for evaluation from the beginning so that successful program models can be replicated as appropriate; and

(9) To provide for the development of delinquency and other prevention programs and community based services under public

auspices where there is no local private leadership. (Code 1981, § 49-5-151, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a misspelling of “existed” was corrected near the end of paragraph (4).

Pursuant to Code Section 28-9-5, in 1990, the subsection designation “(a)” was deleted, since there is no subsection (b).

49-5-152. Purchase of care or services from public or private agencies.

The council and any other appropriate state or local agency are authorized to purchase care or services from public or private agencies providing delinquency or other prevention programs or community based services, provided the program meets the state standards as authorized by Code Section 49-5-151. (Code 1981, § 49-5-152, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 10.)

49-5-153. Annual report.

The council shall prepare an annual report on the progress of the community based programs of this state which shall include the most current institutional and out-of-home placement populations of children being served by the various departments of state government and which shall include comparative costs of all children-serving agencies. Such report shall be submitted to the Governor and the various state departments providing services to children. The council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 49-5-153, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 11; Ga. L. 2005, p. 1036, § 40/SB 49.)

49-5-154. (For effective date, see note.) Study of youth needs.

The governing authority of each participating county shall establish a local advisory group which includes representation from each component of the local children’s services systems and other interested parties. The advisory group shall appraise the council on the needs of children and youth in its community giving particular attention to the need for prevention programs and community based services, residential or nonresidential, which would provide an alternative to commitment to or placement or custody in the Department of Juvenile Justice or the Department of Human Services and placement in any juvenile detention facility as defined in Code Section 49-4A-1. Such appraisal shall be made annually and in writing. The governing authority of the

county may request technical assistance from the council in conducting such study. (Code 1981, § 49-5-154, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1990, p. 1871, § 3; Ga. L. 1991, p. 435, § 12; Ga. L. 1992, p. 1983, § 33; Ga. L. 1997, p. 1453, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-60/HB 242.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, substituted “any juvenile detention facility as defined in Code Section 49-4A-1” for “a youth development center, foster home, or any other institution” at the end of the second sentence. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall

become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

49-5-155. Effect of article on Department of Juvenile Justice; office as recipient entity for federal grants.

(a) This article shall in no way preempt, duplicate, or supersede services, duties, or other functions performed pursuant to law or regulations by the Department of Juvenile Justice.

(b) Other than the Department of Juvenile Justice, the Governor’s Office for Children and Families created pursuant to Code Section 49-5-132 shall be the only other authorized controlling recipient entity for grants under the United States Department of Justice Juvenile Justice Delinquency and Prevention Grants. (Code 1981, § 49-5-155, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 13; Ga. L. 1992, p. 1983, § 34; Ga. L. 1997, p. 1453, § 1; Ga. L. 2008, p. 568, § 12/HB 1054.)

Editor’s notes. — Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: “This Act may be cited as the ‘Children and Family Services Strengthening Act of 2008.’”

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: “The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our

state’s child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for

serving the needs of our state's families in need."

PART 3

MENTORING ACT OF 2000

49-5-156. Short title; legislative findings; development of program; awarding of grants; applications; recognition; reporting to General Assembly.

(a) This Code section shall be known and may be cited as the "Georgia Mentoring Act of 2000."

(b) The General Assembly finds that:

(1) Every child in this state is encouraged to have a caring adult who, along with parents and teachers, is able to offer support, friendship, encouragement, and motivation to help the child excel academically and lead a productive life;

(2) As a society, we look to a child's family to provide a supportive home environment and realize that the primary responsibility for child rearing must remain with the family. However, we are keenly aware of increases in child abuse and neglect, the escalation of drug and alcohol abuse, and that many children who could excel in school are not receiving all the help and support they need to succeed;

(3) Untapped human resources exist in local communities throughout the state that can provide many children with an additional caring, positive academic role model or mentor. These individuals will help those children progress in school and help direct and reinforce the many opportunities that will further enhance each child's life;

(4) The members of the private sector throughout this state should be commended for their generous financial support of public schools. Now there is another significant contribution they can and must make to Georgia's children and youth: the investment of human capital in our children's future as academic volunteers and mentors;

(5) Programs which provide encouragement and support to children through the use of mentors have resulted in significant increases in graduation rates at the secondary level and in much improved enrollment rates in postsecondary education for some of our most vulnerable youth;

(6) Local, regional, and state-wide resource referral systems must be established to link more efficiently children and potential academic volunteers and mentors with existing programs and organizations; and

(7) Volunteer and mentor service must be encouraged and appropriately recognized.

(c) In order to develop a state-wide strategy to provide academic support and guidance to each student who requires it, there is created the Georgia Mentoring Program, to be administered by the Governor's Office for Children and Families. Subject to appropriation by the General Assembly, the office shall:

(1) Develop a state-wide plan with the goal of matching every child who needs one with an academic mentor. For purposes of this Code section, the term "academic mentor" or "academic volunteer and mentor" means a volunteer who, as a participant in a local project funded under this Code section, supports the needs of the individual child with whom the volunteer is matched, including without limitation, strengthening the child's academic preparation and achievement;

(2) Develop standards for the operation of local projects for the provision of academic volunteer and mentor services;

(3) Develop criteria and procedures for funding local projects for the provision of academic volunteer and mentor services, based on local need. Such criteria shall include, but not be limited to, the following indicators: size of the school age population, school dropout rates, and student achievement;

(4) Develop and implement a state-wide public awareness and recruitment campaign for academic mentors; and

(5) Compile a state-wide resource directory of successful academic mentor programs and organizations.

(d) The Governor's Office for Children and Families shall award grants to local school systems to administer the academic volunteer and mentor service program within the local school district, subject to appropriation by the General Assembly. Funds awarded under this Code section shall be expended exclusively for the recruitment, screening, training, and placement of academic mentors in accordance with the purposes of this Code section and for evaluation of the program established by this Code section. Local school systems which receive grants shall contract with nonprofit organizations or local government agencies for program operations. In selecting the organization or agency with which to contract, the local school system shall consider the experience of the organization or agency with operating volunteer mentor projects. Each entity receiving funds under this Code section shall consult and cooperate with any teacher in whose classroom it is proposed that an academic mentor be placed. No displacement of any certified or classified school employee shall occur as a result of the use of any academic mentor pursuant to this Code section.

(e) Any local school system desiring a grant under this Code section shall submit an application to the Governor's Office for Children and Families. In addition to such other information as the office may require, each application shall include the following:

- (1) A description of activities for which assistance is requested;
- (2) A list of coapplicants, if any;
- (3) The number of children expected to be served;
- (4) A statement of the goals of the program to be supported by the grant;
- (5) A statement of the applicant's experience in the recruitment, placement, and training of volunteers and mentors;
- (6) A statement of how the applicant intends to recruit, screen, train, and place academic mentors;
- (7) A statement of how the applicant will ensure that (A) academic volunteers and mentors will be required to undergo a criminal background check and (B) no displacement of existing school employees will occur as a result of the use of academic volunteers and mentors;
- (8) A statement of the efforts the applicant will make to maximize the use of existing state, federal, and local funds from both public and private sources for the purposes of the project; and
- (9) A plan for integration of the applicant's efforts with other community based children's services.

(f) The General Assembly further finds that outstanding academic volunteer and mentor service should be encouraged and recognized. For that purpose, the Governor is authorized to provide an award to recognize outstanding academic volunteer or mentor service in the schools for each fiscal year in which funds are appropriated for the program established under this Code section. Local school systems may nominate an individual or individual program that has had a significant and positive impact upon the lives of children for the award.

(g) No later than one year following the date on which funding is provided for the purposes of this Code section, and annually thereafter in any fiscal year for which funds are appropriated for the purposes of this Code section, the Governor's Office for Children and Families shall submit to the General Assembly a report describing the progress and accomplishments of the Georgia Mentoring Program. The report shall also identify any barriers to the full achievement of the goals of the program and shall include any recommended legislative changes in that regard. (Code 1981, § 49-5-156, enacted by Ga. L. 2000, p. 1098, § 2; Ga. L. 2008, p. 568, §§ 12, 13/HB 1054.)

Editor’s notes. — Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: “This Act may be cited as the ‘Children and Family Services Strengthening Act of 2008.’”

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: “The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state’s child welfare system. The General

Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state’s families in need.”

ARTICLE 7

REGISTRATION OF ORGANIZATIONS PROVIDING SERVICES TO
RUNAWAY AND HOMELESS YOUTH

Effective date. — This article became effective July 1, 2011.

Editor’s notes. — This article, consisting of Code Sections 49-5-160 through 49-5-164, formerly pertained to the commission on children and youth. The former article was based on Ga. L. 1964, p. 499, § 1, and Ga. L. 1985, p. 149, § 31, and was repealed by Ga. L. 1991, p. 435, § 19, effective July 1, 1991.

Ga. L. 2011, p. 470, § 1/SB 94, not codified by the General Assembly, pro-

vides: “This Act shall be known and may be cited as the ‘Runaway Youth Safety Act.’”

Administrative rules and regulations. — Program for the Education of Homeless Children and Youth/Education of Homeless Children and Youth Subgrants, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Grant Programs, § 160-1-4-.59.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts, § 36.

49-5-160. Definitions; qualifications.

As used in this article, the term:

(1) “Licensed” means an individual who has been licensed pursuant to Chapter 10A, 26, 34, or 39 of Title 43.

(2) “Organization” means a nonprofit charitable organization which is exempt from taxation under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, which:

(A) Serves children who have run away or children who are homeless;

(B) Has qualified staff on duty at all hours the organization is open for service; and

(C) Employs at least one individual who is licensed pursuant to Chapter 10A, 26, 34, or 39 of Title 43.

(3) “Qualified staff” means having:

(A) All staff who directly interact with children receive training on emergency evacuation procedures, service protocols, and the mandatory child abuse reporting requirements set forth in Code Section 19-7-5; and

(B) All staff have had a criminal record check conducted in accordance with Article 5 of this chapter. (Code 1981, § 49-5-160, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-161. Registration and form required; fee; issuance of certificate.

(a) On and after July 1, 2011, all organizations shall register under this Code section by submitting a form to the department, upon forms furnished by the department. The form shall require the name, address, and telephone number of the organization and emergency contact information.

(b) A registrant shall be required to pay an annual registration fee of \$25.00.

(c) Upon receipt of an application for registration, payment of the registration fees, and presentation by the applicant of evidence that the organization meets the qualifications prescribed by Code Section 49-4-162, the department shall issue such organization a registration certificate valid for one year. (Code 1981, § 49-5-161, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-162. Policies; qualified staff; proof of liability coverage.

(a) The department shall require organizations to have reasonable:

(1) Written policies and procedures for admission, intake, and record keeping;

(2) Written policies regarding treatment and referrals for mental, physical, and emotional health;

(3) Written policies for reports of actual or alleged injuries at an organization’s premises; and

(4) Proof of having qualified staff.

(b) The department shall require that organizations:

(1) Photograph all minors considered for admission by the organization;

(2) Have proof of liability insurance coverage sufficient to protect the clients of the organization's facility; and

(3) Provide a copy of its registration to the sheriff of the county in which the organization operates a facility, and the sheriff shall distribute such registration to all appropriate law enforcement agencies within the county. (Code 1981, § 49-5-162, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-163. Display of registration; inspection of facilities; investigation.

(a) A registered organization shall prominently display its registration at some location near the entrance of the premises of such organization that is open to view by the public.

(b) The department shall be given the right to periodically inspect the facilities of registered organizations. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the organization.

(c) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any organization or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require. (Code 1981, § 49-5-163, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

49-5-164. Registered organization not exempt.

Nothing in this article shall be construed to exempt a registered organization from the requirements of Code Section 49-5-12 for minors who are present with a service provider longer than 72 hours after the minor has accepted services. (Code 1981, § 49-5-164, enacted by Ga. L. 2011, p. 470, § 4/SB 94.)

ARTICLE 8

CENTRAL CHILD ABUSE REGISTRY

JUDICIAL DECISIONS

Constitutionality. — Portion of O.C.G.A. § 49-5-183.1 precluding a person from compelling a child's testimony in proceedings in which the person is classified as a child abuser is unconstitutional and, because it is central to the general scope of the Act establishing the registry system, the entire Act is unconstitutional. *State v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998).

Law reviews. — For note on 1995 amendments of sections in this article, see 12 Ga. St. U.L. Rev. 360 (1995).

49-5-180. Definitions.

As used in this article, the term:

(1) “Abuse investigator” means the department, any local department of family and children services, law enforcement agency, or district attorney or designee thereof.

(2) “Abuse registry” means the Child Protective Services Information System required to be established by Code Section 49-5-181.

(3) “Abused” means subjected to child abuse.

(3.1) “Administrative law judge” means the person who conducts a hearing for the Office of State Administrative Hearings pursuant to this article.

(3.2) “Alleged child abuser” means a person deemed to be an alleged child abuser pursuant to Code Section 49-5-183.1.

(4) “Child” means any person under 18 years of age.

(5) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means, and this shall be deemed to be physical abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof if said neglect or exploitation consists of a lack of supervision, abandonment, or intentional or unintentional disregard by a parent or caretaker of a child’s basic needs for food, shelter, medical care, or education as evidenced by repeated incidents or a single incident which places the child at substantial risk of harm, and this shall be deemed to be child neglect for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; and

(C) Sexual abuse of a child, and this shall be deemed to be sexual abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited

practitioner thereof shall, for that reason alone, be considered to be an abused child.

(6) "Confirmed" means that an investigation by an abuse investigator has revealed that there is equal or greater credible evidence that child abuse occurred than the credible evidence that child abuse did not occur.

(6.1) "DFACS office" means the principal office of a county department of family and children services.

(7) "Division" means the Division of Family and Children Services of the Department of Human Services.

(8) "Out-of-state abuse investigator" means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

(8.1) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation;

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; or

(J) Sexual exploitation.

Sexual abuse shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the

minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(9) “Sexual exploitation” means conduct by a person who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(10) “Unconfirmed” means that an investigation by an abuse investigator has revealed that there is some credible evidence that child abuse occurred but there is not sufficient credible evidence to classify that child abuse as confirmed.

(11) Reserved.

(12) “Unfounded” means that an investigation by an abuse investigator has determined that there is no credible evidence that child abuse occurred. (Code 1981, § 49-5-180, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 2; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Law reviews. — For review of 1996 social services legislation, see 13 Ga. U. L. Rev. 300 (1996).

49-5-181. Establishment of central registry.

The division shall establish and maintain a central registry which shall receive all information regarding confirmed and unconfirmed cases of child abuse reported to the division pursuant to Code Section 49-5-183.1 and which shall be known as the “Child Protective Services Information System.” (Code 1981, § 49-5-181, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

Law reviews. — For note on 1990 enactment of this Code section, see 7 Ga. St. U.L. Rev. 268 (1990).

RESEARCH REFERENCES

ALR. — Constitutional challenges to state child abuse registries, 36 ALR6th 475.

49-5-182. Purpose of abuse registry.

The abuse registry shall be operated in such a manner as to enable abuse investigators to:

- (1) Immediately identify and locate prior reports of child abuse; and
- (2) Maintain and produce aggregate statistical data of reported cases of child abuse. (Code 1981, § 49-5-182, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

49-5-183. Reporting of abuse cases to DFACS office.

(a) An abuse investigator who completes the investigation of a child abuse report made pursuant to Code Section 19-7-5 or otherwise shall make a written report to the DFACS office of any county in which the investigation was conducted. The investigator's report shall classify the child abuse alleged to have been committed by each person in the case as "confirmed," "unconfirmed," or "unfounded."

(b) The report to the DFACS office made pursuant to subsection (a) of this Code section shall also include the following:

- (1) Name, age, sex, race, social security number, if known, and birthdate of the child alleged to have been abused;
- (2) Name, age, sex, race, social security number, and birthdate of the child's parents, custodian, or caretaker, if known;
- (3) Name, age, sex, race, social security number, and birthdate of the person shown by some credible evidence to be the person who committed the child abuse. If there is equal or greater credible evidence that the person committed the abuse than the person did not commit the abuse, the person's name shall be listed as a "confirmed"; otherwise, the person's name shall be listed as an "unconfirmed"; and
- (4) A summary of the known details of the child abuse which at a minimum shall contain the classification of the abuse as provided in paragraph (5) of Code Section 49-5-180 as either sexual abuse, physical abuse, child neglect, or a combination thereof. (Code 1981, § 49-5-183, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1991, p. 1320, § 4; Ga. L. 1995, p. 937, § 2.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 194 (1992).

49-5-183.1. Notice to alleged child abuser of classification; procedures; notification to division; children under 16 years of age not required to testify.

(a) If a DFACS office, pursuant to Code Section 49-5-183, receives an abuse investigator's report naming a person as having committed an act of child abuse classified as "confirmed" or "unconfirmed" in the report and such person was at least 13 years of age at the time of the commission of such act, the person so named shall be deemed to be an alleged child abuser for purposes of this article.

(b) When a DFACS office receives an investigator's report pursuant to subsection (a) of this Code section naming an alleged child abuser, that office shall mail to each alleged child abuser so classified in such report a notice regarding such classification. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the current address of the alleged child abuser and proper postage affixed. The notice of classification shall further inform such alleged child abuser of such person's right to a hearing to appeal such classification. The notice of classification shall further inform such alleged child abuser of the procedures for obtaining the hearing, and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(c) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (e) of this Code section who is alleged to have committed an act of child abuse shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the DFACS office which transmitted the hearing request to apply to the superior court of the county in which such DFACS office is located to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by the county in which such DFACS office is located.

(d) In order to exercise such right to a hearing, the alleged child abuser must file a written request for a hearing with the DFACS office which mailed the notice of classification within ten days after receipt of such notice. The written request shall contain the alleged child abuser's current residence address and, if the person has a telephone, a telephone number at which such person may be notified of the hearing.

(e) A DFACS office which receives a timely written request for a hearing under subsection (d) of this Code section shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether there was sufficient credible evidence of child abuse by the alleged child abuser to justify the investigator’s classification of such abuse as “confirmed” or “unconfirmed.” The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the DFACS office by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the DFACS office, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, that hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within the state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county of the DFACS office which transmitted the hearing request to the Office of State Administrative Hearings. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(f) At the conclusion of the hearing under subsection (e) of this Code section, the administrative law judge shall order that the alleged child abuser’s name not be included in the abuse registry upon a finding that there is no credible evidence that such individual committed the child abuse alleged; otherwise, the administrative law judge shall order listing of the alleged child abuser’s name on the abuse registry as

confirmed if there is equal or greater credible evidence that such individual committed the child abuse alleged than such individual did not commit the child abuse alleged or as unconfirmed if there is some credible evidence that the alleged child abuser committed the alleged child abuse but not enough credible evidence to classify the individual as confirmed. The general public shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article and the files and records relating thereto shall be confidential and not subject to public inspection.

(g) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (f) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of such decision in accordance with Chapter 13 of Title 50, except that the petition for review shall be filed within ten days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be substantially the same as those for judicial review of contested cases under Code Section 50-13-19 except that the filing of a petition for judicial review stays the listing of the petitioner's name upon the abuse registry and the superior court shall conduct the review and render its decision thereon within 30 days following the filing of the petition. The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court under this subsection shall not be subject to further appeal or review.

(h) The DFACS office which notifies a person of that person's classification as an alleged child abuser and of that person's right to a hearing regarding that classification shall transmit to the division the investigator's report so naming such person unless that office receives a written request for such hearing within the time for making such request under subsection (d) of this Code section. If a timely request for hearing is received, the administrative law judge shall transmit to the division his or her decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision unless a petition for judicial review of that decision is filed within the permitted time period. If a timely petition for judicial review is filed within the permitted time period, the superior court shall transmit to the division its decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision.

(i) No child younger than 16 years of age shall be compelled to appear to testify at any hearing held pursuant to this Code section. If a child

younger than 16 years of age testifies voluntarily, such testimony shall be given in compliance with procedures analogous to those contained in Code Section 17-8-55. Nothing in this article shall prohibit introducing a child's statement in a hearing held pursuant to this Code section if the statement meets the criteria of Code Section 24-8-820. (Code 1981, § 49-5-183.1, enacted by Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 2011, p. 99, § 93/HB 24; Ga. L. 2013, p. 222, § 20/HB 349.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-8-820" for "Code Section 24-3-16" at the end of the last sentence of subsection (i). See editor's note for applicability.

The 2013 amendment, effective July 1, 2013, substituted "younger than 16 years of age" for "under the age of 14" in the first and second sentences of subsection (i). See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "first-class" was substituted for "first class" in the fourth sentence of subsection (e).

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment

of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 300 (1996).

JUDICIAL DECISIONS

Constitutionality. — Provision of O.C.G.A. § 49-5-183.1 precluding a person from compelling a child's testimony in proceedings in which the person is classi-

fied as a child abuser is unconstitutional on the statute's face. *State v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998).

RESEARCH REFERENCES

ALR. — Constitutional challenges to state child abuse registries, 36 ALR6th 475.

49-5-184. Information to be included in abuse registry; hearing on expungement of name from registry; order; appeal.

(a) If the division receives an investigator's report, administrative law judge's decision, or superior court decision which finds credible evidence that an alleged child abuser has committed an act of child abuse which is confirmed or unconfirmed, the division shall include on the abuse registry the name and such classification of the alleged child abuser along with the investigator's report regarding such individual.

(b) All identifying information in the abuse registry of cases classified as unconfirmed shall be expunged from the abuse registry within two years after the case is so classified.

(c) Any person whose name appears in the abuse registry without a hearing having been held to determine whether or not there was sufficient credible evidence of child abuse by such person or a reasonable basis to justify such inclusion on the registry is entitled to a hearing for an administrative determination of whether or not expungement of such person's name should be ordered. In order to exercise such right, the person must file a written request for a hearing with the DFACS office of any county in which the investigation was conducted which resulted in such person's name being included in the abuse registry. The provisions of this subsection shall not apply to persons who have had a hearing pursuant to Code Section 49-5-183.1 or have waived their hearing after receipt of notice.

(d) A DFACS office which receives a written request for a hearing by a person entitled to a hearing pursuant to subsection (c) of this Code section shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provisions of law, the Office of State Administrative Hearings shall conduct a hearing as provided in this subsection. A hearing shall be conducted upon that request within 60 days following its receipt by the Office of State Administrative Hearings. The procedures and standards for such hearing shall be substantially the same as those for administrative hearings under Code Section 49-5-183.1. Upon a finding that there is no credible evidence that the person who requested the hearing committed the child abuse which was the basis for including such person's name on the abuse registry, the Office of State Administrative Hearings shall order the division to expunge that name from the registry; otherwise, the Office of State Administrative Hearings shall not take any action regarding the inclusion of such person's name on the registry unless the Office of State Administrative Hearings finds credible evidence of child abuse by such person which justifies a different classification of the named person than the classification shown on the registry, in which case the Office of State Administrative Hearings shall order the appropriate classification to be shown by the division on the registry. The general public shall be excluded from such hearings and the files and records relating thereto shall be confidential and not subject to public inspection.

(e) Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings under subsection (d) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of that decision in accordance with Chapter 13 of Title 50, except that the petition for

review shall be filed within 30 days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be the same as those for judicial review of contested cases under Code Section 50-13-19. The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court under this subsection shall not be subject to further appeal or review. (Code 1981, § 49-5-184, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “Office of State Administrative Hearings” was substituted for “State Office of Administrative Hearings” in the second sentence of subsection (d).

Law reviews. — For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 300 (1996).

JUDICIAL DECISIONS

Cited in In re I.B., 219 Ga. App. 268, 464 S.E.2d 865 (1995).

49-5-185. Access to information in registry.

(a) Except as otherwise provided in subsection (c) of this Code section and subsection (b) of Code Section 49-5-186, only an abuse investigator, medical examiner, coroner, or out-of-state abuse investigator which has investigated, or is investigating, a case of possible child abuse shall be provided any information from the abuse registry and shall only be provided information relating to that case for purposes of using that information in such investigation.

(b) The department shall provide the Governor’s office, the General Assembly, district attorneys, and law enforcement agencies with a statistical analysis of reported cases from the abuse registry at the end of each calendar year. This analysis shall not include the names of any children, parents, or persons alleged to have committed child abuse. This analysis shall not be protected by any laws prohibiting the dissemination of confidential information.

(c) A person may make a written request to any DFACS office to find out whether such person’s name is included on the abuse registry. Upon presentation of a passport, military identification card, driver’s license, or identification card authorized under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall disclose to such person whether that person’s name is included on the abuse registry and, if so, whether the report is classified as confirmed or unconfirmed, the date upon which the person’s name was listed on the registry, and the county

in which the investigation was conducted which resulted in such inclusion. (Code 1981, § 49-5-185, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.

(a) Information in the abuse registry shall be confidential and access thereto is prohibited except as provided in this article. Such information shall not be deemed to be a record of child abuse for purposes of Article 2 of this chapter.

(b)(1) Information obtained from the abuse registry may not be made a part of any record which is open to the public except as provided in paragraph (2) of this subsection and except that a district attorney may use in any court proceeding that information in the course of any criminal prosecution for any offense which constitutes or results from child abuse if such information is otherwise admissible.

(2) Notwithstanding any other provisions of law, information in the abuse registry applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent which information relates to the child while in the custody of the state department or agency or foster parent whose custody the child was in at the time of the child's death shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

(c) Any person who knowingly provides from the abuse registry any information to a person not authorized to be provided that information under this article shall be guilty of a misdemeanor.

(d) Any person who knowingly and under false pretense obtains or attempts to obtain information which was obtained from the abuse registry except as authorized in this article shall be guilty of a misdemeanor. (Code 1981, § 49-5-186, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1998, p. 609, § 6.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "this chapter" was substituted for "Chapter 5 of Title 49" in the second sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 1995, a comma was deleted following "this article" in subsection (c).

49-5-187. Immunity from civil or criminal liability.

The department, each DFACS office, and employees thereof providing information from the abuse registry as authorized by this article and any person who uses such information from the abuse registry as

authorized by this article shall have no civil or criminal liability therefor. (Code 1981, § 49-5-187, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

ARTICLE 9

FAMILY PRESERVATION AND CHILD PROTECTION

49-5-200 through 49-5-209.

Repealed by Ga. L. 1990, p. 1986, § 2, effective January 1, 1993.

Editor's notes. — This article was 1991, p. 435, §§ 14-16; and Ga. L. 1992, p. based on Ga. L. 1990, p. 1986, § 1; Ga. L. 6, § 49.

ARTICLE 10

CHILDREN AND ADOLESCENTS WITH SEVERE EMOTIONAL PROBLEMS

Code Commission notes. — Pursuant sections renumbered as Code Sections to Code Section 28-9-5, in 1990, this article was renumbered as Article 10, and its 49-5-220 to 49-5-227, as another Article 8 was enacted in 1990.

49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(a) The General Assembly declares its intention and desire to:

(1) Ensure a comprehensive mental health program consisting of early identification, prevention, and early intervention for every child in Georgia;

(2) Preserve the sanctity of the family unit;

(3) Prevent the unnecessary removal of children and adolescents with a severe emotional disturbance from their homes;

(4) Prevent the unnecessary placement of these children out of state;

(5) Bring those children home who through use of public funds are inappropriately placed out of state; and

(6) Develop a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services, and support services, as prescribed in an individualized plan.

(b) In recognition of the fact that services to these children are provided by several different agencies, each having a different philos-

ophy, a different mandate, and a different source of funding, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities shall have the primary responsibility for planning, developing, and implementing the coordinated system of care for severely emotionally disturbed children. Further, it recognizes that to enable severely emotionally disturbed children to develop appropriate behaviors and demonstrate academic and vocational skills, it is necessary that the Department of Education provide appropriate education in accordance with P.L. 94-142 and that the Department of Behavioral Health and Developmental Disabilities provide mental health treatment.

(c) Further, in recognition that only a portion of the children needing services are receiving them and in recognition that not all the services that comprise a coordinated system of care are currently in existence or do not exist in adequate numbers, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities and the Department of Education jointly develop and implement a State Plan for the Coordinated System of Care for severely or emotionally disturbed children or adolescents as defined in paragraph (10) of Code Section 49-5-221.

(d) The commissioner of behavioral health and developmental disabilities and the State School Superintendent shall be responsible for the development and implementation of the state plan.

(e) The commissioner of behavioral health and developmental disabilities shall be responsible for preparing this jointly developed state plan for print or electronic publication and dissemination. The commissioner of behavioral health and developmental disabilities shall also be responsible for preparing for print or electronic publication and dissemination the annual report.

(f) The receipt of services under this article is not intended to be conditioned upon placement of a child in the legal custody, protective supervision, or protection of the Department of Human Services. (Code 1981, § 49-5-220, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2002, p. 1324, § 1-23; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 3-26/HB 228; Ga. L. 2010, p. 838, § 11/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “49-5-221” was substituted for “49-5-181” in subsection (c) to correspond to the renumbering of this article.

The amendment of this Code section by

Ga. L. 2009, p. 8, § 49, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 453, § 3-2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

49-5-221. Definitions.

As used in this article, the term:

(1) “Annual report” means the report prepared by the commissioner of the Department of Behavioral Health and Developmental Disabilities for print or electronic publication and dissemination that includes: the jointly developed State Plan for the Coordinated System of Care; and data on state services to severely emotionally disturbed children or adolescents that are provided either directly by the Department of Behavioral Health and Developmental Disabilities, the Department of Education, or other involved state agencies, or indirectly through state funding to private agencies.

(2) “Case management” means assuring continuity of services for the child and family, coordinating of services for the child and family, coordinating the interagency assessment of the child and family’s needs, arranging for needed services, and linking various services and agencies.

(3) “Case manager” means the individual identified and assigned the responsibility of ensuring that the child and family obtain necessary services. The case manager shall ensure that evaluations and service provision from multiple agencies are coordinated; that services are based on integrated assessments and evaluations; that adequacy and appropriateness of services is reviewed through quarterly case review staffings; that prompt service delivery is facilitated; that clients are tracked; and that family involvement and input is maintained.

(4) “Coordinated system of care” means a comprehensive array of mental health and other necessary services organized into a coordinated network to meet the multiple and changing needs of severely emotionally disturbed children and adolescents.

(5) “Five-year plan” or “state plan” means the State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(6) “Individualized plan” means a written plan for a child or adolescent with a severe emotional disturbance, when appropriate and when eligible, that is based upon the comprehensive multidisciplinary assessment of the individual needs of the child. Such plans shall include, but not be limited to: individualized treatment plans; individualized education plans; individualized placement plans; individualized case plans; individualized family service plans; and individualized employment, service, and rehabilitation plans.

(7) “Local interagency children’s committees” means committees with multiagency representation that are established at the local

level to staff cases and review decisions about appropriate treatment or placement of children or adolescents experiencing severe emotional disturbance. Existing troubled children's committees may serve as local interagency committees.

(8) "Regional plan" means a written strategy developed by local interagency children's committees based on the principles delineated in Code Section 49-5-222. It contains the same components as the state plan.

(9) "Reintegration plan" means an individualized plan that is designed to provide for the return of the severely emotionally disturbed child or adolescent, who has been placed out of home or out of state to his family or community.

(10) "Severely emotionally disturbed child or adolescent" or "child or adolescent with a severe emotional disturbance" means a person defined as such by the Department of Behavioral Health and Developmental Disabilities for mental health services or by the Department of Education for educational purposes. (Code 1981, § 49-5-221, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 838, § 11/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "49-5-222" was substituted for "49-5-182" in paragraph (8) to correspond to the renumbering of this article.

49-5-222. Guiding principles for coordinated system of care.

The following ideals shall be the guiding principles for the coordinated system of care:

(1) Services shall be child and family centered and give priority to keeping children with their families. Families shall be fully involved in all aspects of planning and delivery of services; however, no family shall be required to accept services for any family member;

(2) Services shall be community based, with decision-making responsibility and management at the community level;

(3) Services shall be comprehensive, addressing the child's physical, educational, social, and emotional needs;

(4) Agency resources and services shall be shared and coordinated with written interagency agreements detailing linkages;

(5) Services shall be provided in the least restrictive setting consistent with effective services and as close to the child's home as appropriate;

(6) Services shall address the unique needs and potential of each child and shall be sufficiently flexible to meet the individual needs of the child and family;

- (7) Services shall promote early identification and intervention;
- (8) Services shall be culturally and ethnically sensitive;
- (9) All legal rights of these children shall be protected; and
- (10) The parent or guardian shall be involved in the development of the individualized plan and the delivery of services as defined by the individualized plan. (Code 1981, § 49-5-222, enacted by Ga. L. 1990, p. 1798, § 1.)

49-5-223. Contents of plan; information to be collected; updating of plan; implementation date.

(a) The State Plan for the Coordinated System of Care shall be based upon the projected need for services for a five-year period. The plan shall:

(1) Be based upon the principles delineated in Code Section 49-5-222;

(2) Be based on a case management system with assigned case managers;

(3) Consider nonresidential services including case management, prevention, early identification, assessment, outpatient treatment, home based services, day treatment, and emergency services;

(4) Consider residential services including therapeutic foster care, therapeutic group care, independent living services, residential treatment care, and inpatient hospitalization;

(5) Include mechanisms for handling conflict resolution among the various responsible agencies;

(6) Provide a mechanism to coordinate local resources with all involved state agencies;

(7) Develop specific guidelines for the development and submission of regional interagency plans based on the principles in Code Section 49-5-222;

(8) Provide for the coordination of budget, where possible; for the publication of joint costs of the comprehensive plan; and for a statement on budget recommendations;

(9) Identify gaps in service;

(10) Identify needed policy revisions; and

(11) Recommend priorities for the continuation or development of programs and resources.

(b) In developing the plan, the Department of Behavioral Health and Developmental Disabilities and the Department of Education shall collect information on the population currently being served and the population projected to be served.

(c) The plan shall be updated annually.

(d) The first plan shall be put into implementation by July 1, 1991. (Code 1981, § 49-5-223, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 2009, p. 453, § 3-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “49-5-222” was substituted for “49-5-182” in paragraphs (a)(1) and (a)(7) to correspond to the renumbering of this article.

49-5-224. Commissioner of behavioral health and developmental disabilities to submit annual report; contents of report.

The commissioner of behavioral health and developmental disabilities shall submit an annual report to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, and the Governor’s Office for Children and Families. The report shall contain a copy of the updated State Plan for the Coordinated System of Care. The report shall also contain the following information on severely and emotionally disturbed children and adolescents receiving services directly or indirectly through the Department of Behavioral Health and Developmental Disabilities, the Department of Education, or any other state agency:

(1) The number and ages of children in out-of-state residential facilities;

(2) The number and ages of children in in-state residential facilities;

(3) The number and ages of children in nonresidential treatment;

(4) Annual public funds expended for out-of-state placements, the sources of such funds, and the average cost per child of such out-of-state placement;

(5) Annual public funds expended for in-state residential placements, the sources of such funds, and their average cost per child of such in-state residential placement;

(6) Annual public funds expended for nonresidential treatment, the sources of such funds, and the average cost per child of such nonresidential treatment;

(7) The average length of stay in out-of-state and in-state placements; and

(8) The number and ages of children placed in out-of-home treatment compared to the total number of children in each county of the state. (Code 1981, § 49-5-224, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1991, p. 435, § 17; Ga. L. 2005, p. 48, § 6/HB 309; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2009, p. 303, §§ 9, 14/HB 117; Ga. L. 2009, p. 453, §§ 3-2, 3-3/HB 228.)

Editor's notes. — Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commis-

sion, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 21 (1992).

49-5-225. Local interagency committees; membership; function of committees.

(a) At least one local interagency committee shall be established for each region of the Department of Behavioral Health and Developmental Disabilities whose permanent membership shall include a local representative from each of the following:

- (1) The community mental health agency responsible for coordinating children's services;
- (2) The Division of Family and Children Services of the Department of Human Services;
- (3) The Department of Juvenile Justice;
- (4) The Department of Public Health;
- (5) A member of the special education staff of the local education agency; and

(6) The Georgia Vocational Rehabilitation Agency.

(b) In addition to the permanent members, the local interagency committee reviewing the case of a child or adolescent may include as ad hoc members the special education administrator of the school district serving the child or adolescent, the parents of the child or adolescent, and caseworkers from any involved agencies.

(c) The local interagency committees shall:

(1) Staff cases and review and modify as needed decisions about placement of children and adolescents in out-of-home treatment or placement, monitor each child's progress, facilitate prompt return to the child's home when possible, develop a reintegration plan shortly after a child's admission to a treatment program, review the individual plan for the child or adolescent and amend the plan if necessary, and ensure that services are provided in the least restrictive setting consistent with effective services; and

(2) Be the focal point for the regional plan, if any. (Code 1981, § 49-5-225, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 1137, § 5; Ga. L. 2002, p. 1324, § 1-24; Ga. L. 2009, p. 453, § 3-27/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 303, § 3/HB 1146.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Division of Public Health of the Department of Community Health" in paragraph (a)(4).

The 2012 amendment, effective July 1, 2012, substituted "Georgia Vocational Rehabilitation Agency" for "Division of Re-

habilitation Services of the Department of Labor" in paragraph (a)(6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "and" was added to the end of paragraph (a)(5).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

49-5-226. Placement of children and adolescents out of state for treatment.

(a) Effective July 1, 1993, no children or adolescents with a serious emotional disturbance shall be placed out of state for treatment except after all community resources have been exhausted, all administrative procedures and remedies have been exhausted, or the court has ordered placement or services other than in Georgia.

(b) The cases of all children and adolescents currently placed out of state for treatment of serious emotional problems shall be reviewed to determine the appropriateness of their placement, their readiness to return to their home community, and needed services. All children currently in out-of-state placement shall be brought home no later than July 1, 1995, but only after each child has been given an individual reintegration plan specifying in detail the services, both in terms of

human services and in fiscal resources, that shall be available and provided for that child and family. The services for each such child shall be provided from the funds appropriated, including funds now used for out-of-state placement of such child, and all such services shall be provided in the least restrictive environment.

(c) Fiscal incentives, such as flexible funding or decentralized funding, shall be developed for keeping children with their families and developing community based services.

(d) Nothing in this article shall prohibit or prevent a nonprofit agency from contracting with the state to provide any part of the continuum of services, provided that such services shall be provided in the least restrictive environment. (Code 1981, § 49-5-226, enacted by Ga. L. 1990, p. 1798, § 1.)

49-5-227. Governor's Office for Children and Families to comment on plan for Coordinated System of Care and provide recommendations.

The Governor's Office for Children and Families shall:

(1) Annually review and comment on the State Plan for the Coordinated System of Care, and submit its comments to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, the Department of Behavioral Health and Developmental Disabilities, and the Department of Education; and

(2) Annually identify and recommend fiscal, policy, and program initiatives and revisions in the state coordinated system of care to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, the Department of Behavioral Health and Developmental Disabilities, and the Department of Education. (Code 1981, § 49-5-227, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1991, p. 435, § 18; Ga. L. 2005, p. 48, § 7/HB 309; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2009, p. 303, §§ 9, 14/HB 117; Ga. L. 2009, p. 453, § 3-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted at the beginning of the present undesignated introductory language.

Editor's notes. — Ga. L. 2008, p. 568,

§ 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, pro-

49-5-227 PROGRAMS AND PROTECTION FOR CHILDREN **T.49, C.5, A.13**

vides: “The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state’s child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the

Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state’s families in need.”

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 21 (1992).

ARTICLE 11

CHILD CARE COUNCIL

49-5-240 through 49-5-244.

Reserved. Redesignated by Ga. L. 2004, p. 645, § 15, effective October 1, 2004.

Editor’s notes. — Ga. L. 2004, p. 645, § 15, effective October 1, 2004, redesignated former Code Sections 49-5-240 through 49-5-244 as present Code Sections 20-1A-60 through 20-1A-64, respectively.

ARTICLE 12

POLICY COUNCIL FOR CHILDREN AND FAMILIES

49-5-250 through 49-5-264.

Reserved. Repealed by Ga. L. 2001, p. 4, § 49, effective February 12, 2001.

Editor’s notes. — This article, consisting of Code Sections 49-5-250 through 49-5-264, concerning the policy council for children and families, was based on Ga. L. 1995, p. 316, § 1; Ga. L. 1997, p. 1453, § 2; Ga. L. 1999, p. 296, § 24.

ARTICLE 13

PEACHCARE FOR KIDS

Law reviews. — For review of 1998 legislation relating to health, see 15 Ga. St. U.L. Rev. 122 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 33 et seq.

C.J.S. — 81 C.J.S., Social Security, § 231 et seq.

49-5-270. Short title.

This article shall be known and may be cited as the “PeachCare for Kids Act.” (Code 1981, § 49-5-270, enacted by Ga. L. 1998, p. 623, § 1.)

49-5-271. Legislative findings.

The General Assembly finds and declares that a large proportion of school-aged children in Georgia do not currently have access to adequate medical treatment and, further, that this lack of access can hinder a child’s ability to reach his or her full physical and educational potential. The General Assembly further finds that federal funding made available to the states under Title XXI of the federal Social Security Act may be used to administer programs to provide such coverage. The General Assembly further finds the provision of adequate medical coverage for this population to be in the public interest and further declares the establishment of the program pursuant to this article to be a desirable and economical means of increasing access to such medical coverage. (Code 1981, § 49-5-271, enacted by Ga. L. 1998, p. 623, § 1.)

49-5-272. Definitions.

As used in this article, the term:

- (1) “Board” means the Board of Community Health.
- (2) “Department” means the Department of Community Health.
- (3) “Federal law” means Title XXI of the federal Social Security Act.
- (4) “Medicaid” means medical assistance provided under Article 7 of Chapter 4 of this title, the “Georgia Medical Assistance Act of 1977.”
- (5) “PeachCare” or “program” means the PeachCare for Kids Program created by Code Section 49-5-273. (Code 1981, § 49-5-272, enacted by Ga. L. 1998, p. 623, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2005, p. 1438, § 4/SB 140.)

49-5-273. Creation of PeachCare; availability; eligibility; payment of premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.

(a) There is created the PeachCare for Kids Program to provide health care benefits for children in families with income below 235 percent of the federal poverty level. Children from birth through 18 years of age in families with family incomes below 235 percent of the federal poverty level and who are not eligible for medical assistance under Medicaid shall be eligible for the program, to be administered by the department pursuant to federal law and subject to availability of funding.

(b) No entitlement to benefits for the children covered under the program or this article shall be created by the program, nor shall this article or any rules or regulations adopted pursuant to this article be interpreted to entitle any person to receive any health services or insurance available under this program. The program shall be established subject to the availability of funds specifically appropriated by the General Assembly for this purpose and federal matching funds as set forth in federal law. The department shall operate the program consistent with administrative efficiency and the best interests of children.

(c) The program shall offer substantially the same health care services available to children under Georgia's Medicaid plan, but coverage for such services shall not be provided by an expansion of eligibility for medical assistance under Medicaid. However, the program shall exclude nonemergency transportation and targeted case management services. The department shall utilize appropriate medical management and utilization control procedures necessary to manage care effectively and shall prospectively limit enrollment in the program and modify the health care services benefits when the department has reason to believe the cost of such enrollment or services may exceed the availability of funding.

(d) The department may require copayments for services consistent with federal law; provided, however, that no copayment shall be charged for preventive services and no copayments or premiums shall be charged for any child under six years of age. Preventive services include but are not limited to medically necessary maintenance medication and monitoring for chronic conditions such as asthma and diabetes.

(e) The department shall require payment of premiums for participation in the program. The premiums shall not exceed the amounts permitted under Section 1916(b)(1) of the Social Security Act or federal law.

(f) The department may provide for presumptive eligibility for all applicant children as allowed by federal law and in a manner consistent with the provisions of this article.

(g) The department shall provide for outreach for the purpose of enrolling children in the program. Applications shall be accepted by mail or in person. All necessary and appropriate steps shall be taken to achieve administrative cost efficiency, reduce administrative barriers to application for and receipt of services under the program, verify eligibility for the program and enforce eligibility standards, and ensure that enrollment in the program does not substitute for coverage under a group health insurance plan.

(h) Any health care provider who is enrolled in the Medicaid program shall be deemed to be enrolled in the program.

(i) The department shall file a Title XXI plan to carry out the program with the United States Department of Health and Human Services Centers for Medicare and Medicaid Services. The department shall have the authority and flexibility to make such decisions as are necessary to secure approval of that plan consistent with this article. The department shall provide a copy of the plan to the General Assembly. The department shall operate this program consistent with federal law.

(j) The department shall publish in print or electronically an annual report, a copy of which shall be provided to the Governor, setting forth the number of participants in the program, the health services provided, the amount of money paid to providers, and other pertinent information with respect to the administration of the program. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient.

(k) All state agencies shall cooperate with the department and its designated agents by providing requested information to assist in the administration of the program.

(l) The department, through the Department of Administrative Services or any other appropriate entity, may contract for any or all of the following: the collection of premiums, processing of applications, verification of eligibility, outreach, data services, and evaluation, if such contracting achieves administrative or service cost efficiency. The department, and other state agencies as appropriate, shall provide necessary information to any entity which has contracted with the department for services related to the administration of the program upon request. For purposes of compliance with Code Section 34-8-125, a request by any entity which has contracted with the department for

services related to the administration of the program shall be deemed to be a request by a responsible official of the department and considered to be a request by the department.

(m) Nothing in this article shall be interpreted in a manner so as to preclude the department from contracting with licensed health maintenance organizations (HMO) or provider sponsored health care corporations (PSHCC) for coverage of program services and eligible children; provided, however, that such contracts shall require payment of premiums and copayments in a manner consistent with this article. The department may require enrollment in a health maintenance organization (HMO) or provider sponsored health care corporation (PSHCC) as a condition of receiving coverage under the program.

(n) The Department of Education and local boards of education shall cooperate with and provide assistance to the department and its designated agents for the purposes of identifying and enrolling eligible children in the program.

(o) As necessary to enforce the provisions of this article, the department or its duly authorized agents may submit to the state revenue commissioner the names of applicants for health care benefits or payments provided under this article, as well as the relevant income threshold specified therein. If the department elects to contract with the state revenue commissioner for such purposes, the state revenue commissioner and his or her agents or employees shall notify the department whether or not each submitted applicant's income exceeds the relevant income threshold provided. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No information shall be provided by the Department of Revenue to the department without an executed cooperative agreement between the two departments. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection is subject to the provisions of Code Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful divulging of confidential tax information. (Code 1981, § 49-5-273, enacted by Ga. L. 1998, p. 623, § 1; Ga. L. 2000, p. 472, §§ 1, 2; Ga. L. 2002, p. 415, § 49; Ga. L. 2005, p. 1036, § 41/SB 49; Ga. L. 2005, p. 1438, § 5/SB 140; Ga. L. 2009, p. 63, § 2/SB 165; Ga. L. 2010, p. 838, § 10/SB 388.)

U.S. Code. — Section 6103 of the Internal Revenue Code, referred to in subsection (o) of this Code section, is codified as 26 U.S.C. § 6103.

ARTICLE 14

FOSTER PARENTS BILL OF RIGHTS

Cross references. — Tax credit for adoption of foster child, § 48-7-29.15.

49-5-280. Short title.

This article shall be known and may be cited as the “Foster Parents Bill of Rights.” (Code 1981, § 49-5-280, enacted by Ga. L. 2004, p. 157, § 1.)

RESEARCH REFERENCES

ALR. — Standing of foster parent to seek termination of rights of foster child’s natural parents, 21 ALR4th 535.

49-5-281. (For effective date, see note.) Bill of rights for foster parents; filing of grievance in event of violations.

(a) The General Assembly finds that foster parents providing care for children who are in the custody of the Department of Human Services play an integral, indispensable, and vital role in the state’s effort to care for dependent children displaced from their homes. The General Assembly further finds that it is in the best interest of Georgia’s child welfare system to acknowledge foster parents as active and participating members of this system and to support them through the following bill of rights for foster parents who care for children in the custody of the Department of Human Services through direct approval and placement by the department:

(1) The right to be treated by the Division of Family and Children Services of the Department of Human Services and other partners in the care of abused children with dignity, respect, and trust as a primary provider of foster care and a member of the professional team caring for foster children;

(2) The right not to be discriminated against on the basis of religion, race, color, creed, gender, marital status, national origin, age, or physical handicap;

(3) The right to continue with his or her own family values and beliefs, so long as the values and beliefs of the foster child and the birth family are not infringed upon and consideration is given to the special needs of children who have experienced trauma and separation from their families. This shall include the right to exercise parental authority within the limits of policies, procedures, and other

directions of the Division of Family and Children Services and within the limits of the laws of the State of Georgia;

(4) The right to receive both standardized pre-service training, including training in Division of Family and Children Services policies and procedures and appropriate ongoing training, by the Division of Family and Children Services or the placing agency at appropriate intervals to meet mutually assessed needs of the child and to improve foster parents' skills and to apprise foster parents of any changes in policies and procedures of the Division of Family and Children Services and any changes in applicable law;

(5) The right to be apprised of information, laws, and guidelines on the obligations, responsibilities, and opportunities of foster parenting and to be kept informed of any changes in laws, policies, and procedures regarding foster parenting by the Division of Family and Children Services in a timely manner and at least annually;

(6) The right to receive timely financial reimbursement according to the agreement between the foster parents and the Department of Human Services from funds appropriated by the General Assembly and to be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;

(7) The right to receive information from the Division of Family and Children Services on how to receive services and reach personnel 24 hours per day, seven days per week;

(8) The right prior to the placement of a child to be notified of any issues relative to the child that may jeopardize the health and safety of the foster family or the child or alter the manner in which foster care should be administered;

(9) The right to discuss information regarding the child prior to placement. The Division of Family and Children Services will provide such information as it becomes available as allowable under state and federal laws;

(10) The right to refuse placement of a child in the foster home or to request, upon reasonable notice, the removal of a child from the foster home without fear of reprisal or any adverse effect on being assigned any future foster or adoptive placements;

(11) The right to receive any information through the Division of Family and Children Services regarding the number of times a foster child has been moved and the reasons therefor; and to receive the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release and as allowable under state and federal law;

(12) The right, at any time during which a child is placed with the foster parent, to receive from the Division of Family and Children Services any and all additional pertinent information relevant to the care of the child;

(13) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster parent's home and to discuss such plan with the case manager, as well as reasonable notification of any changes to that plan;

(14) The right to participate in the planning of visitation with the child and the child's biological family with the foster parents recognizing that visitation with his or her biological family is important to the child;

(15) (For effective date, see note.) The right to participate in the case planning and decision-making process with the Division of Family and Children Services regarding the child as provided in Code Section 15-11-201;

(16) The right to provide input concerning the plan of services for the child and to have that input considered by the department;

(17) The right to communicate for the purpose of participating in the case of the foster child with other professionals who work with such child within the context of the professional team, including, but not limited to, therapists, physicians, and teachers, as allowable under state and federal law;

(18) (For effective date, see note.) The right to be notified in advance, in writing, by the Division of Family and Children Services or the court of any hearing or review where the case plan or permanency of the child is an issue, including initial and periodic reviews held by the court in accordance with Code Section 15-11-216 or by the Judicial Citizen Review Panel in accordance with Code Section 15-11-217, hearings following revocation of the license of an agency which has permanent custody of a child in accordance with Code Section 31-2-6, and permanency plan hearings in accordance with Code Section 15-11-230;

(19) The right to be considered, where appropriate, as a preferential placement option when a child who was formerly placed with the foster parents has reentered the foster care system;

(20) The right to be considered, where appropriate, as the first choice as a permanent parent or parents for a child who, after 12 months of placement in the foster home, is released for adoption or permanent foster care;

(21) The right to be provided a fair and timely investigation of complaints concerning the operation of a foster home;

(22) The right to an explanation of a corrective action plan or policy violation relating to foster parents; and

(23) The right, to the extent allowed under state and federal law, to have an advocate present at all portions of investigations of abuse and neglect at which an accused foster parent is present. Child abuse and neglect investigations shall be investigated pursuant to Division of Family and Children Services policies and procedures, and any removal of a foster child shall be conducted pursuant to those policies and procedures. The Division of Family and Children Services will permit volunteers with the Adoptive and Foster Parent Association of Georgia to be educated concerning the procedures relevant to investigations of alleged abuse and neglect and the rights of accused foster parents. After such training, a volunteer will be permitted to serve as an advocate for an accused foster parent. All communication received by the advocate in this capacity shall be strictly confidential.

(b) This bill of rights shall be given full consideration when Division of Family and Children Services policies regarding foster care and adoptive placement are developed.

(c) Foster parents who care for children in the custody of the Department of Human Services through direct approval and placement by the department shall have the right to file a grievance in response to any violation of this article, which shall be such foster parents' exclusive administrative remedy for any violation of this article. The Division of Family and Children Services and the Office of the Child Advocate for the Protection of Children, along with an advisory committee comprised in part of representatives from the Adoptive and Foster Parent Association of Georgia, who provide private placements will develop a grievance procedure, including a mediation procedure, to be published in departmental policy manuals and the Foster Parent Handbook no later than July 1, 2005.

(d) The General Assembly further finds that it is also in the best interest of Georgia's child welfare system for the Division of Family and Children Services of the Department of Human Services to recognize the bill of rights, with reasonable modifications made to adapt the provisions as required to make them applicable to private agencies, by incorporating them into contracts with private agencies serving children in the custody of the Department of Human Services. The Department of Human Services shall, by contract, require that providers, with whom it contracts for the placement of children in its custody, give full consideration to the rights in subsection (a) of this Code section in developing their policies, practices, and procedures regarding foster care and adoptive placement. The department shall provide information needed by the contractors to meet the requirements of this subsection in a timely manner.

(e) The Department of Human Services, in consultation with the representatives of Georgia Association of Homes and Services for Children and other appropriate provider associations and the Adoptive and Foster Parent Association of Georgia, shall develop a grievance procedure for dealing with any grievances their foster parents have in response to any violation of this article, no later than July 1, 2007. The department shall enforce this provision through policies and procedures and through its contracts with providers. (Code 1981, § 49-5-281, enacted by Ga. L. 2004, p. 157, § 1; Ga. L. 2007, p. 646, § 1/SB 188; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-61/HB 242.)

Delayed effective date. — Paragraphs (a)(15) and (a)(18), as set out above, become effective January 1, 2014. For versions of paragraphs (a)(15) and (a)(18) in effect until January 1, 2014, see the 2013 amendment note.

The 2013 amendment, effective January 1, 2014, substituted “Code Section 15-11-201” for “Code Section 15-11-58” in paragraph (a)(15); and, in paragraph (a)(18), inserted “initial and”, inserted “in accordance with Code Section 15-11-216”, inserted “in accordance with Code Section 15-11-217”, and substituted “in accordance with Code Section 31-2-6, and permanency plan hearings in accordance with Code Section 15-11-230” for “, permanency hearings, and motions to extend custody, in accordance with Code Section 15-11-58”. See editor’s note for applicability.

Cross references. — Counting attendance for student attending court proceedings on foster care, § 20-2-692.2.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2004, “no later than July 1, 2005” was substituted for “within one year of the effective date of the article” at the end of subsection (c).

Pursuant to Code Section 28-9-5, in 2007, “effect” was substituted for “affect” in paragraph (a)(10).

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

JUDICIAL DECISIONS

Protection of children. — Innocent foster children are entitled to greater protection than imprisoned criminals; thus, the professional judgment standard applies when determining issues of summary judgment. *Kenny A. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

Duty of state. — Once state officials have removed a child from his or her home, the officials have a constitutional duty to protect the child from harm. This duty includes an obligation to fund and implement safe and appropriate place-

ments and services that do not substantially depart from accepted standards of professional judgment and do not unnecessarily interfere with the child’s rights of familial association. *Kenny A. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

Statute does not grant adoption rights. — Foster parents did not have standing to pursue an adoption of a foster child that had been living happily with the child’s grandmother for three years because the biological parents did not surrender their rights in favor of the foster

parents, O.C.G.A. § 19-8-5, and the Foster Parent's Bill of Rights, O.C.G.A. § 49-5-281, did not grant adoption rights. *Owen v. Watts*, 303 Ga. App. 867, 695 S.E.2d 62, cert. denied, U.S. , 131 S. Ct. 156, 178 L. Ed. 2d 93 (2010).

Unmarried individuals may adopt.

— Trial court abused the court's discretion by denying a foster parent's petition to adopt the foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state's public policy because all of the evidence showed that the adoption would be in the child's best interest, and the trial court failed to apply the law as

written and determine whether it was in the child's best interest to allow the adoption; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child's interests and the Department of Family and Children's Services adoption specialist, testified that the adoption was in the child's best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

CHAPTER 6

SERVICES FOR THE AGING

Article 1

General Provisions

Sec.

- 49-6-1. Purpose of article.
- 49-6-2. Department designated agency for federal programs for aging; development and coordination of state, local, and interstate programs.
- 49-6-3. Powers of department.
- 49-6-4. Acceptance of federal and other grants, gifts, bequests, or devises.
- 49-6-5. Creation of the Division of Aging Services within department.
- 49-6-6. Annual report.
- 49-6-7. Funds for expenses.

Article 2

Council on Aging

- 49-6-20. Council created; appointment and terms of members; officers; rules; meetings.
- 49-6-21. Duties and powers of council.
- 49-6-21.1. Additional duties and powers of council; report and recommendations [Repealed].
- 49-6-22. Staff and facilities; expenses of council members.

Article 3

Silver-Haired Legislature

- 49-6-40. Creation; membership; meetings, organization, and adoption of measures.

Article 4

Reserved

Article 5

Community Care and Services for the Elderly

- 49-6-60. Legislative intent.
- 49-6-61. Definitions.
- 49-6-62. Establishment of community care unit; provision of services;

Sec.

annual service plan; implementation plan; annual progress report; fees and contributions; funding.

- 49-6-63. Establishment by lead agency of community care service system; certification for benefits; evaluation by assessment team; volunteers; insurance coverage.
- 49-6-64. Adoption of rules and regulations.

Article 6

Georgia Family Caregiver Support

- 49-6-70. Short title.
- 49-6-71. Purpose.
- 49-6-72. Definitions.
- 49-6-73. Eligibility for benefits; contracts; identification of services.
- 49-6-74. Provision of services; reimbursement of caregivers; maximum amounts available.
- 49-6-75. Entitlements not created.
- 49-6-76. Displacement of other programs prohibited.
- 49-6-77. Rules and regulations.

Article 7

Licensure of Adult Day Center

- 49-6-80. Short title.
- 49-6-81. Legislative intent.
- 49-6-82. Definitions.
- 49-6-83. License required; nontransferable.
- 49-6-84. Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.
- 49-6-85. Periodic inspection by department; exemptions.
- 49-6-86. (For effective date, see note.) Reasonable fees for licensure of adult day centers; use of fees.

Cross references. — Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq. Powers and duties of Department of Human Services and

county departments of family and children services regarding public assistance to the aged, § 49-4-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 1 et seq., 615 et seq.

C.J.S. — 81 C.J.S., Social Security, § 71 et seq.

ARTICLE 1

GENERAL PROVISIONS

49-6-1. Purpose of article.

(a) The constantly increasing proportion of older people within the population of this state and the increasing gravity of the human distress and the loss accruing to the entire society as a result of the limitations and disadvantages confronting older people in maintaining their economic self-sufficiency and personal well-being and realizing their maximum potential as contributors to their community, state, and nation are matters of profound import and concern for all the people of this state.

(b) It is, therefore, necessary and of the utmost importance to encourage the development and maintenance within this state of a comprehensive and coordinated network of public and private facilities for the alleviation or correction of these limitations and disadvantages and to encourage the conducting of continuous study and research into the needs and problems of older people under present and future economic and social conditions because it is essential for the prevention of dependency and the conservation of human values and a necessity in safeguarding and fostering the general welfare.

(c) It is, therefore, declared to be the intent of the General Assembly by the passage of this article to provide for encouragement of the development, maintenance, and coordination of the aforementioned facilities. (Ga. L. 1962, p. 604, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the sub-

section (a), (b), and (c) designations were added in this Code section.

49-6-2. Department designated agency for federal programs for aging; development and coordination of state, local, and interstate programs.

(a) The department shall constitute the designated state agency to handle all programs of the federal government relating to the aging and

requiring acts within the state which are not the specific responsibility of another state agency under provisions of federal or state law. Authority is conferred upon the department to accept and disburse any funds available or which might become available pursuant to the purposes set out in this article.

(b) The department shall study, investigate, promote, plan, and execute a program to meet the present and future needs of aging citizens of the state; and it shall receive the cooperation of all other state departments and agencies in carrying out a coordinated program.

(c) It shall also be the duty of the department to encourage and assist in the development of programs for the aging in the counties, towns, and cities of this state. It shall consult and cooperate with public and private agencies, with county and municipal officers and agencies, and with any federal or state agency or officer for the purpose of promoting coordination between state and local plans and programs and between state and interstate plans and programs for the aging. (Ga. L. 1962, p. 604, § 9.)

49-6-3. Powers of department.

Without limiting the foregoing, the department is authorized to:

- (1) Promote the health of and medical services for the aging in working with professional associations, hospitals, and institutions;
- (2) Promote the rehabilitation of incapacitated older persons;
- (3) Establish a state-wide coordinated program with participation of employers, employee's organizations, and state and local agencies to promote greater and more suitable employment opportunities for older persons;
- (4) Establish a program of research and education on housing of the aged by either public or private means as well as by the establishment of self-sustaining cooperative dwelling projects for aging persons;
- (5) Plan and promote recreational facilities for the aging;
- (6) Develop a program of adult education designed for older persons on subjects of particular concern to them;
- (7) Encourage the further research in the colleges and universities of the state on problems of the aging;
- (8) Encourage training of personnel to handle problems of the aging;
- (9) Promote community education in the problems of older people through institutes, publications, radio, television, and the press;

(10) Provide consultation to communities and groups developing state-wide or local services for older people;

(11) Provide consultation to the various departments of state government concerning matters relating to the aging;

(12) Inquire into and make recommendations to the appropriate agencies, public or private, on any matter affecting the behavior, care, or welfare of the aging;

(13) Enlist the aid of public and private agencies concerned with the welfare of the aging; and study and report on the functions and facilities of governmental agencies and institutions charged with the care, control, protection, and rehabilitation of the aging;

(14) Serve as a communications clearing-house for information in the large and complex fields of human relationship in respect to aging;

(15) Conduct or participate financially in conducting demonstration projects with counties, municipalities, or public or private agencies concerned with problems of the aging;

(16) Do any other thing it deems necessary to promote the health and well-being of the aging citizens of this state not inconsistent with the purposes of this article or the public policies of this state; and

(17) Appoint such committees, on a nonpay basis, as it deems necessary for carrying out the purposes of this article. (Ga. L. 1962, p. 604, § 10.)

Cross references. — Financing of residential care facilities for the elderly, § 31-7-110 et seq.

Administrative rules and regulations. — Nursing homes, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-8.

49-6-4. Acceptance of federal and other grants, gifts, bequests, or devises.

The department may receive and accept on behalf of the state any grant or grant-in-aid from the federal government or any grant, gift, bequest, or devise from any other source; and title shall pass to the state unless otherwise specified by the grantor. (Ga. L. 1962, p. 604, § 11.)

49-6-5. Creation of the Division of Aging Services within department.

The Division of Aging Services, administratively established previously within the department, is statutorily established. The Division of

Aging Services established by this Code section shall have those functions, duties, powers, and responsibilities heretofore assigned by the board and the commissioner and as hereafter so assigned or as provided by law. (Ga. L. 1980, p. 1008, § 1; Ga. L. 2009, p. 453, § 2-5/HB 228.)

49-6-6. Annual report.

It shall be the duty of the department to submit an annual report to the Governor and to notify the General Assembly of such report on or before January 1 of each year, setting forth the results of its studies, accomplishments, and recommendations, if any, for legislation. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Ga. L. 1962, p. 604, § 12; Ga. L. 2005, p. 1036, § 42/SB 49.)

49-6-7. Funds for expenses.

All expenses incurred in administering and carrying this article into effect shall be paid out of funds appropriated by the General Assembly for that purpose or out of such other funds as may be made available. (Ga. L. 1962, p. 604, § 13.)

ARTICLE 2

COUNCIL ON AGING

49-6-20. Council created; appointment and terms of members; officers; rules; meetings.

(a) There is created the Council on Aging. The council shall be composed of 20 members, at least ten of whom shall be consumers of services under programs of the Division of Aging Services of the Department of Human Services or similar state agencies. The ten consumer members shall include low income and minority older persons at least in proportion to their number in the population of the state. The remaining ten members of the council shall be representative of major public and private agencies and organizations in the state and shall be experienced in or have demonstrated particular interest in the needs of the elderly. The members of the council shall be appointed as follows:

(1) Four consumer members and four members representing public and private agencies and organizations shall be appointed by the Governor;

(2) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the President of the Senate;

(3) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the Speaker of the House; and

(4) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the commissioner.

(b) Each member's term shall be for two years and until his successor is appointed and qualified. The members of the council shall be eligible to succeed themselves. The council shall elect its own chairman and such other officers as it deems necessary. The council may adopt rules and procedures. The council shall meet upon the call of its chairman, the board, or the commissioner. (Ga. L. 1972, p. 1015, § 1219; Ga. L. 1977, p. 815, § 1; Ga. L. 2009, p. 453, §§ 2-2, 2-5/HB 228.)

49-6-21. Duties and powers of council.

The Council on Aging shall serve in an advisory capacity to the Governor, the General Assembly, the board, the department, and all other state agencies in matters relating to the elderly. In particular, the council shall:

(1) Make recommendations concerning the establishment and maintenance of an adequate program for the elderly in Georgia;

(2) Recommend standards for services for the elderly;

(3) Aid the department and other state agencies in coordinating programs for the elderly;

(4) Establish indices to determine the effectiveness of programs for the aged;

(5) Ensure that regular, adequate, and accurate reports are submitted by the component parts of aging programs to the council;

(6) Publish in print or electronically regular reports of the council's activities and the adequacy of state programs for the aged; and

(7) Establish liaison with area agency councils on aging. (Ga. L. 1977, p. 815, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

49-6-21.1. Additional duties and powers of council; report and recommendations.

Repealed by Ga. L. 2008, p. 366, § 1/SB 341, effective January 1, 2011.

Editor's notes. — This Code section was based on Code 1981, § 49-6-21.1, enacted by Ga. L. 2008, p. 366, § 1/SB 341.

49-6-22. Staff and facilities; expenses of council members.

The Council on Aging shall be provided with staff personnel, office facilities, and other necessary items by the department. Each member of the council shall be reimbursed for actual expenses incurred in the performance of his duties from funds available to the department. (Ga. L. 1977, p. 815, § 3.)

ARTICLE 3

SILVER-HAIRED LEGISLATURE

49-6-40. Creation; membership; meetings, organization, and adoption of measures.

There is created the Georgia Silver-Haired Legislature. Its members shall be of age 60 or over and shall be duly selected pursuant to procedures developed by the department, the office of the Secretary of State, and the Silver-Haired Legislature in coordination with the state's network of aging programs. The Silver-Haired Legislature is authorized to meet every other year at the state capitol at an appropriate time prior to the convening of the General Assembly. The Silver-Haired Legislature is authorized, within its budgetary limitations, to hire personnel, to solicit private financial support, and to adopt bylaws to govern its internal procedures, and such body is authorized to adopt such measures as it deems appropriate to present to the General Assembly for consideration. (Ga. L. 1980, p. 807; Ga. L. 1997, p. 891, § 1.)

ARTICLE 4

RESERVED

ARTICLE 5

COMMUNITY CARE AND SERVICES FOR THE ELDERLY

Cross references. — Long-term care § 31-8-80 et seq. Rights of residents of ombudsman program, § 31-8-50 et seq. long-term care facilities generally, Reporting of abuse or exploitation of residents in long-term care facilities, § 31-8-100 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Area agencies may not provide case management services. — Area agencies on aging, as part of area planning and development commissions, are not authorized to provide case management ser-

vices pursuant to the Community Care and Services for the Elderly Act, O.C.G.A. § 49-6-60 et seq. 1984 Op. Att'y Gen. No. 84-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare, Laws, § 49.

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189.

49-6-60. Legislative intent.

The purpose of this article is to assist functionally impaired elderly persons in living dignified and reasonably independent lives in their own homes or in the homes of relatives or caregivers through the development, expansion, reorganization, and coordination of various community based services. In recognition of the desire of older Georgians to reside at home or with their families as long as possible, the General Assembly intends that a continuum of care be established so that functionally impaired elderly persons age 60 and older may be assured the least restrictive environment suitable to their needs. The General Assembly further intends to maximize the utilization of existing community social and health services in order to prevent unnecessary placement of individuals in long-term care facilities. The development of innovative approaches to program management, staff training, and service delivery that impact on cost avoidance, cost effectiveness, and program efficiency shall be encouraged. It is further the intent of the General Assembly that the Department of Human Resources (now known as the Department of Human Services) shall serve as the agency responsible for planning and implementing the provision of community based services to the elderly reimbursable under the "Georgia Medical Assistance Act of 1977." (Code 1933, § 88-1901D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-60, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-25/HB 228.)

49-6-61. Definitions.

As used in this article, the term:

(1) "Aging section" means the single organizational unit within the Department of Human Services responsible for the planning and administration of services under the Older Americans Act of 1965.

(2) "Department" means the Department of Human Services.

(3) “Functionally impaired elderly person” means any person 60 years of age or older with physical or mental limitations that restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently.

(4) The “Georgia Medical Assistance Act of 1977” means Article 7 of Chapter 4 of this title.

(5) “Lead agency” means one or more agencies designated by the Department of Human Services to assess services needed by functionally impaired elderly persons, to coordinate and provide community care services to those persons, provide case management, and, where necessary, subcontract with providers of service. A lead agency shall be either a private nonprofit entity or any public entity, including but not limited to any organizational unit of the department.

(6) “Older Americans Act of 1965” means P.L. 92-258, as amended, on July 1, 1982. (Code 1933, § 88-1902D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-61, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “this title” was substituted for “Title 49 of the Official Code of Georgia Annotated” in paragraph (4).

U.S. Code. — The federal Older Americans Act of 1965, referred to in subsection (a), is codified at 42 U.S.C. § 3001 et seq.

49-6-62. Establishment of community care unit; provision of services; annual service plan; implementation plan; annual progress report; fees and contributions; funding.

(a) The department shall establish a community care unit within the aging section. The community care unit shall plan and oversee implementation of a system of coordinated community care and support services for the elderly. The community care unit shall develop uniform assessment criteria that shall be used to determine an individual’s functional impairment and to evaluate on a periodic basis the individual’s need for community support services or institutionalized long-term care. The community care unit shall also define each community care service and establish standards for the delivery of community care services. Where appropriate, the community care unit shall utilize existing standards and definitions.

(b) The department shall designate specified geographic service areas which shall be defined in such a way as to ensure the efficient delivery of community care services.

(c) The department shall contract with a lead agency to coordinate and provide community care services within each specified geographic service area.

(d) Each lead agency shall annually submit to the community care unit for approval a service plan evaluating the community care needs of the functionally impaired elderly, identifying priority services and target client groups, and detailing the means by which community care services will be delivered for the service area of that agency. The plan shall also include projected program costs and fees to be charged for services. The lead agency may exclude from the service plan those individuals eligible for benefits under the "Georgia Medical Assistance Act of 1977," as amended, for whom there is a reasonable expectation that community based services would be more expensive than services the individual would otherwise receive which would have been reimbursable under the "Georgia Medical Assistance Act of 1977," as amended.

(e) The department shall develop a plan which shall provide for the implementation of a community care system in each of the specified geographic service areas by July 1, 1985. The three-year plan shall be developed concurrent with and integrated into the state plan on aging required under the Older Americans Act of 1965 and shall provide for coordination of all community based services for the elderly. The three-year plan shall include an inventory of existing services and an analysis comparing the cost of institutional long-term care and the cost of community care and other community based services for the elderly. The multiyear plan shall be presented to the Board of Human Services no later than July 31, 1983.

(f) At the end of the three-year implementation period an annual community care service plan shall be incorporated into the state plan on aging.

(g) The department shall submit on January 1 of each year, beginning in 1984, a progress report on the implementation of the plan required by subsection (e) of this Code section to the Speaker of the House of Representatives, the Senate Committee on Assignments, the chairman of the House Committee on Health and Human Services and the chairman of the Senate Health and Human Services Committee.

(h) In accordance with rules promulgated by the department, lead agencies may collect fees for community care case management and other services. Such fees shall be established on a sliding scale based upon income and economic need. Fees will not be charged those individuals for the mandatory assessment described in subsection (e) of Code Section 49-6-63. Lead agencies may accept contributions of money or contributions in kind from functionally impaired elderly persons,

members of their families, or other interested persons or organizations. Such contributions may not be a condition of services and shall only be used to further the provision of community care services.

(i) Funding for services under this article shall be in addition to and not in lieu of funding for existing community services for the elderly. The department and the lead agency shall ensure that all other funding sources available, including reimbursement under the “Georgia Medical Assistance Act of 1977” and the Older Americans Act of 1965, have been used prior to utilizing state funds for community care for the elderly. (Code 1933, § 88-1903D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-62, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 1992, p. 6, § 49; Ga. L. 2005, p. 48, § 8/HB 309; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-3/HB 228; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (g).

U.S. Code. — The federal Older Americans Act of 1965, referred to throughout this Code section, is codified at 42 U.S.C. § 3001 et seq.

49-6-63. Establishment by lead agency of community care service system; certification for benefits; evaluation by assessment team; volunteers; insurance coverage.

(a) Each lead agency shall be responsible for the establishment of a community care service system which shall have as its primary purpose the prevention of unnecessary institutionalization of functionally impaired elderly persons through the provision of community based services. Each community care service system shall provide no fewer than six of the services listed in subsection (c) of this Code section, four of which shall include case management, assessment of functional impairment and needed community services, homemaker, and home health care services. Case management services shall be provided to each community care service recipient to ensure that arrangements are made for appropriate services. If independent living is no longer possible for a functionally impaired elderly person, the case manager shall assist the person in locating the most appropriate, least restrictive, and most cost beneficial alternative living arrangement.

(b) All existing community resources available to the functionally impaired elderly person shall be coordinated into the community care service system to provide a continuum of care to such persons. The lead agency shall establish agreements, policies, and procedures for service integration and referral mechanisms with such programs.

(c) Services to be coordinated by the lead agency shall include, without being limited to, the following:

- (1) Case management;
- (2) Assessment of functional impairment and needed community services;
- (3) Homemaker services;
- (4) Home health care services;
- (5) In-home personal care services;
- (6) Adult day health services;
- (7) Adult day care;
- (8) Habilitation services;
- (9) Respite care;
- (10) Older Americans Act services, including transportation, nutritional, social, and other services;
- (11) Title XX services;
- (12) Senior center services;
- (13) Protective services;
- (14) Financial assistance services, including, but not limited to, food stamps, Medicaid, medicare, and Supplemental Security Income;
- (15) Health maintenance services; and
- (16) Other community services.

(d) Priority in provision of community care services shall be given to those individuals who have been certified for skilled or intermediate institutional nursing care service benefits conferred by the "Georgia Medical Assistance Act of 1977" and who need home and community based services in order to avoid institutionalization. Services may be provided to other functionally impaired persons as resources allow, as determined by the department. Priority in provision of community care services to such other persons will be based on economic, social, and medical needs.

(e) All individuals seeking certification for benefits conferred by the "Georgia Medical Assistance Act of 1977," as amended, to be used to pay the cost of placement in a long-term care facility or individuals who would be eligible for such benefits within 180 days of nursing home admission, shall, as a precondition to that certification, undergo evaluation by an assessment team designated by the lead agency to determine if institutionalization can be avoided by provision of more cost-effective community based services. If the individual being evalu-

ated requires community based services which, over a 12 month period, would cost more than the cost of care in a long-term care facility, then such community based services shall not be deemed cost effective. Such cost-effective determination shall apply to each case management evaluation. The assessment team shall, at a minimum, consist of a physician, a registered nurse, and a social worker. Whenever possible, the assessment team shall be responsible for the precertification for nursing home placement and determination of the appropriate level of care, as required by the State Plan for Medical Assistance, as defined in the "Georgia Medical Assistance Act of 1977."

(f) The decision of the assessment team shall be forwarded to the agency designated in the State Plan for Medical Assistance, as defined in the "Georgia Medical Assistance Act of 1977," as responsible for the certification of benefits for individuals. If the assessment team and the case manager have determined that an individual could be better and more cost effectively served in the community, said agency shall not certify said individual for skilled or intermediate institutional nursing care service benefits until the lead agency has informed that individual of the availability of community based services within the lead agency's geographic service area and of the right of that individual to choose to receive those services as an alternative to placement in a long-term care facility. That individual shall advise the lead agency of that individual's choice of service alternatives. If that individual is otherwise eligible for those benefits for which certification is sought, the agency responsible for certification of benefits shall certify the individual either for placement in a long-term care facility or for receiving community based services, as the individual advised the lead agency. The evaluation and certification shall be completed in a timely manner.

(g) The lead agency shall seek to utilize volunteers to provide community services for functionally impaired elderly persons. The department may provide appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments in the community care service system. Coverage may also include excess automobile liability protection. (Code 1933, § 88-1904D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-63, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "community based" was substituted for "community-based" in the first sentences of subsections (a) and (d).

U.S. Code. — The federal Older Americans Act of 1965, referred to in paragraph

(c)(10), is codified at 42 U.S.C. § 3001 et seq.

Paragraph (c)(11) refers to grants to states for services under "Title XX," a reference to Title XX of the federal Social Security Act of 1935, which is codified at 42 U.S.C. § 1397 et seq.

49-6-64. Adoption of rules and regulations.

The department shall adopt rules and regulations necessary to implement the provisions of this article. (Code 1933, § 88-1905D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-64, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38.)

ARTICLE 6**GEORGIA FAMILY CAREGIVER SUPPORT****RESEARCH REFERENCES**

Am. Jur. Proof of Facts. — Alzheimer's and Multi-Infarct Dementia — Proceedings to Appoint Guardian Based on Incapacity, 18 POF3d 185.

49-6-70. Short title.

This article shall be known and may be cited as the "Georgia Family Caregiver Support Act." (Code 1981, § 49-6-70, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-71. Purpose.

The purpose of this article shall be to establish a comprehensive caregiver program which will marshal and integrate available resources and services to provide support and services to caregivers of chronically dependent adults. This article exists to coordinate assistance and maximize available services while maintaining and supporting existing services for caregivers. Such assistance may include:

(1) Coordination and integration of information and services to caregivers in Georgia, including, but not limited to, insurance and benefits counseling, respite services available under the community care services program, the state respite or adult day-care program, or the Older Americans Act of 1965, as amended, and coordination with educational and other services offered by the caregiver resource center;

(2) Assistance to the caregiver to assure that supports to the functionally dependent older adult or adult suffering from dementia are adequate and appropriate to maintain these individuals in the home;

(3) Intermittent, planned, or emergency relief to the caregiver, either directly or through use of other available resources and services;

(4) Restoration or maintenance of the caregiver's well-being;

(5) Preservation of the caregiver's informal supports such as family and friends;

(6) Supportive social services to the caregiver; and

(7) Affordable services through a cost-sharing mechanism developed by the Division of Aging Services of the department for those families whose household incomes do not exceed 400 percent of the federal poverty level. (Code 1981, § 49-6-71, enacted by Ga. L. 1994, p. 455, § 1.)

U.S. Code. — The federal Older Americans Act of 1965, referred to in paragraph (1), is codified at 42 U.S.C. § 3001 et seq.

49-6-72. Definitions.

As used in this article, the term:

(1) "Adult" means a person 18 years of age or older residing within the State of Georgia who is a functionally dependent older adult or who is suffering from dementia, such as Alzheimer's disease.

(2) "Area agency on aging" means the single local agency designated by the Division of Aging Services of the department within each planning and service area to administer the delivery of a comprehensive and coordinated plan of social and other services and activities in the planning and service area.

(3) "Dementia" means: (A) an irreversible global loss of cognitive function causing evident intellectual impairment which always includes memory loss, without alteration of state of consciousness, as diagnosed by a physician, and is severe enough to interfere with work or social activities, or both, and to require continuous care or supervision; or (B) the comatose state of an adult resulting from any head injury.

(4) "Department" means the Department of Human Services.

(5) "Functionally dependent older adult" means a person 60 years of age or older residing within the State of Georgia who, because of his or her inability to perform tasks required for daily living, as defined by the department and as may be assessed through an area agency on aging or community care assessment team, needs continuous care and supervision.

(6) "Home modification" means reasonable modifications to the structure of a home for the purpose of reducing the caregiving burden of the caregiver, as approved by the department, but does not include repairs and payment for such repairs.

(7) “Household income” means the income of all members of a household with the exception of a minor or dependent student.

(8) “Income” means all income, from whatever source derived, including, but not limited to, wages, salaries, social security or railroad retirement income, public assistance income, realized capital gains, and workers’ compensation. The department shall determine income amounts and inclusions for the purposes of this article through regulation.

(9) “Primary caregiver” means the one identified relative or other person in a relationship of responsibility, such as an agent under a valid durable power of attorney for health care or health care agent under a valid advance directive for health care, who has assumed the primary responsibility for the provision of care needed to maintain the physical or mental health of a functionally dependent older adult or other adult suffering from dementia, who lives in the same residence with such individual, and who does not receive financial compensation for the care provided. A substantiated case of abuse, neglect, or exploitation, as defined in Chapter 5 of Title 30, the “Disabled Adults and Elder Persons Protection Act,” or pursuant to any other civil or criminal statute regarding an older adult, shall prohibit a primary caregiver from receiving benefits under this article unless authorized by the department to prevent further abuse.

(10) “Relative” means a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, great aunt, great uncle, niece, or nephew by blood, marriage, or adoption.

(11) “Respite care service” means a regular, intermittent, or emergency service which provides the primary caregiver of a functionally dependent older adult or other adult suffering from dementia with relief from normal caregiving duties and responsibilities. (Code 1981, § 49-6-72, enacted by Ga. L. 1994, p. 455, § 1; Ga. L. 2007, p. 133, § 18/HB 24; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, inserted “of age” near the beginning of paragraph (1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “workers” was substituted for “worker’s” in the first sentence in paragraph (8).

Pursuant to Code Section 28-9-5, in 2006, “Disabled Adults and Elder Persons Protection Act” was substituted for “Dis-

abled Adults Protection Act” in the last sentence of paragraph (9).

Editor’s notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: “(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be

withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups

worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual’s decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

49-6-73. Eligibility for benefits; contracts; identification of services.

(a) The persons to be served under this article are primary caregivers who provide continuous care to a functionally dependent older adult or other adult suffering from dementia, such as Alzheimer’s disease.

(b) The department shall develop operating procedures and guidelines and shall contract with or through area agencies on aging to provide benefits set forth in this article. The department may also contract with other support centers or service providers directly, where such service is provided on a state-wide basis or where necessary or appropriate. The department shall have the authority to develop criteria through regulation relating to eligibility for primary caregivers to receive assistance pursuant to this article.

(c) The department shall identify supportive services which are directly related to the provision of care to a functionally dependent older adult or other adult suffering from dementia. Supportive services include, but are not limited to:

(1) Benefits counseling and caregiver counseling, education, and training;

(2) Reimbursement to primary caregivers whose households financially qualify for assistance pursuant to Code Section 49-6-74 and as developed by regulation of the department for expenses incurred in obtaining day or night respite care services, transportation to respite

care service locations, or other supportive services defined by regulation, and consumable supplies such as incontinence pads; and

(3) Reimbursement to primary caregivers whose households financially qualify for assistance pursuant to Code Section 49-6-74 and as developed by regulation for expenses incurred in obtaining home modifications or assistive devices, as approved by the department, such as grab bars, safety devices, and wheelchair ramps, which help the functionally dependent older adult or adult suffering from dementia carry out tasks required for daily living. (Code 1981, § 49-6-73, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-74. Provision of services; reimbursement of caregivers; maximum amounts available.

(a) The department, through contracts with or through area agencies on aging and other appropriate entities, shall provide the services described in paragraph (1) of subsection (c) of Code Section 49-6-73 and shall reimburse qualified primary caregivers for purchase of approved services, equipment, and supplies described in paragraphs (2) and (3) of subsection (c) of Code Section 49-6-73.

(b)(1) The maximum amount available to a qualified primary caregiver whose household income is under 200 percent of the federal poverty level shall be established by regulation. The department shall be responsible for developing allowable cost ranges for services and supplies under paragraphs (1) and (2) of subsection (c) of Code Section 49-6-73, including the development of maximum amounts available per month to a caregiver, where necessary.

(2) The maximum amount available to a qualified caregiver whose household income is under 200 percent of federal poverty level shall be established by regulation but shall not exceed \$2,000.00 for the entire duration of the case for expenses incurred for home modifications or assistive devices as described in paragraph (3) of subsection (c) of Code Section 49-6-73.

(3) A sliding benefits scale shall be established by the department by regulation to ensure that caregivers who qualify under this article and whose household income exceeds 200 percent of the federal poverty level shall pay some portions of the out-of-pocket expenses for services, equipment, and supplies described in subsection (c) of Code Section 49-6-73. In no event will persons whose household income exceeds 400 percent of the federal poverty level be considered eligible for state funded services, equipment, or supplies under this article but such persons may purchase such services through this program by paying the entire cost of such services. (Code 1981, § 49-6-74, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-75. Entitlements not created.

Nothing in this article creates or provides any individual with an entitlement to services, equipment, and supplies or benefits which will be made available only to the extent of the availability and level of appropriations made by the General Assembly. (Code 1981, § 49-6-75, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-76. Displacement of other programs prohibited.

Funding authorized under this article shall not be used to displace benefits, entitlements, or resources available under other programs. (Code 1981, § 49-6-76, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-77. Rules and regulations.

The department shall adopt rules and regulations necessary to implement the provisions of this article. (Code 1981, § 49-6-77, enacted by Ga. L. 1994, p. 455, § 1.)

ARTICLE 7**LICENSURE OF ADULT DAY CENTER**

Cross references. — Protection of disabled adults and elder persons, § 30-5-1 et seq. Disclosure of treatment of Alzheimer's Disease or Alzheimer's related dementia, § 31-8-180 et seq.

Editor's notes. — Ga. L. 2003, p. 298, § 3(b), not codified by the General Assembly, provides that this article, as enacted by Ga. L. 2003, p. 298, § 1 as Code Sections 49-6-80 through 49-6-85, shall be-

come effective July 1 of the fiscal year following the year in which funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2007 session of the General Assembly.

49-6-80. Short title.

This article shall be known and may be cited as the "Adult Day Center for Aging Adults Licensure Act." (Code 1981, § 49-6-80, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-81. Legislative intent.

The intent of the General Assembly is to promote, safeguard, and protect the well-being of adults participating in adult day care or adult day health services by authorizing, promoting, and supporting licensure regulations for adult day care and adult day health services providers. It is further the intent of the General Assembly that the Department of Community Health shall serve as the agency responsi-

ble for promulgating, implementing, and enforcing the licensure regulations. (Code 1981, § 49-6-81, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

49-6-82. Definitions.

As used in this article, the term:

(1) “Adult day care” means the provision of a comprehensive plan of services that meets the needs of aging adults, as defined in paragraph (4) of this Code section, under a social model, as defined in paragraph (9) of this Code section. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

(2) “Adult day center” means a facility serving aging adults that provides adult day care or adult day health services, as defined in paragraphs (1) and (3) of this Code section, for compensation, to three or more persons. This term shall not include a respite care services program.

(3) “Adult day health services” means the provision of a comprehensive plan of services that meets the needs of aging adults under a medical model, as defined in paragraph (6) of this Code section. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

(4) “Aging adults” means persons 60 years of age or older or mature adults below the age of 60 whose needs and interests are substantially similar to persons 60 years of age or older who have physical or mental limitations that restrict their abilities to perform the normal activities of daily living and impede independent living.

(5) “Department” means the Department of Community Health.

(6) “Medical model” means a comprehensive program that provides aging adults with the basic social, rehabilitative, health, and personal care services needed to sustain essential activities of daily living and to restore or maintain optimal capacity for self-care. Such program of care shall be based on individual plans of care and shall be provided for less than 24 hours per day.

(7) “Primary caregiver” means the one identified relative or other person in a relationship of responsibility, such as an agent under a valid durable power of attorney for health care or health care agent under a valid advance directive for health care, who has assumed the primary responsibility for the provision of care needed to maintain the physical or mental health of an aging adult, who lives in the same

residence with such individual, and who does not receive financial compensation for the care provided.

(8) “Respite care services program” means a program for aging adults who can function in a group setting and who can feed and toilet themselves with or without the assistance of a personal aide accompanying them which:

(A) Is operated by a nonprofit organization;

(B) Provides no more than 25 hours of services per week;

(C) Is managed by a director who has completed an adult day care services training and orientation program approved by the department;

(D) Is staffed primarily by volunteers; and

(E) Has as its sole purpose to provide primary caregivers of aging adults with relief from normal caregiving duties and responsibilities.

(9) “Social model” means a program that addresses primarily the basic social and recreational activities needed to be provided to aging adults, but also provides, as required, limited personal care assistance, supervision, or assistance essential for sustaining the activities of daily living. Such programs of care shall be based on individual plans of care and shall be provided for less than 24 hours per day. (Code 1981, § 49-6-82, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2008, p. 537, § 1/HB 1044; Ga. L. 2009, p. 453, § 1-4/HB 228.)

49-6-83. License required; nontransferable.

No person, business entity, corporation, or association, whether operated for profit or not for profit, shall operate an adult day center without first obtaining a license or a provisional license from the department. A license issued under this article shall not be assignable or transferable. (Code 1981, § 49-6-83, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-84. Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.

The department is authorized to promulgate rules and regulations to implement this article utilizing the public rule-making process to elicit input from consumers, providers, and advocates. The department is further authorized to issue, deny, suspend, or revoke licenses or take other enforcement actions against licensees or applicants as provided in Code Section 31-2-8. All rules and regulations and any enforcement

actions initiated by the department shall comply with the requirements of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 49-6-84, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2009, p. 453, § 1-56/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Code Section 31-2-8” for “Code Section 31-2-11” in the second sentence of this Code section.	Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).
---	---

49-6-85. Periodic inspection by department; exemptions.

An adult day center for which an application for a license has been submitted or to which a license has been issued shall be inspected by the department periodically and as determined necessary to monitor such center’s compliance with applicable laws and regulations; provided, however, the department may exempt a center from inspection if such center has been certified or accredited by a certification or accreditation entity recognized and approved by the department if such entity uses standards that are substantially similar to those established by the department. A center seeking exemption from inspection shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation inspection report, which shall be maintained by the department as a public record. (Code 1981, § 49-6-85, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-86. (For effective date, see note.) Reasonable fees for licensure of adult day centers; use of fees.

The department shall be authorized to charge reasonable application fees, license fees, renewal fees, or other similar fees relating to the licensure of adult day centers in an amount established by the board pursuant to rules and regulations. The board shall take into consideration input from consumers, providers of adult day health services, and advocates during the rulemaking process to establish such fees. If so appropriated by the General Assembly, the fees shall be used to support the licensing, inspecting, and monitoring of adult day centers. Fees may be refunded by the department for good cause, as determined by the department. (Code 1981, § 49-6-86, enacted by Ga. L. 2007, p. 348, § 2/HB 505.)

Delayed effective date. — Ga. L. 2007, p. 348, § 3/HB 505 provides this Code section becomes effective only when funds are specifically appropriated for purposes of the Act in an Appropriations	Act making specific reference to that Act. Funds were not appropriated at the 2007, 2008, 2009, 2010, 2011, 2012, or 2013 sessions of the General Assembly.
---	--

CHAPTER 7

FAMILY-PLANNING SERVICES

Sec.		Sec.	
49-7-1.	Short title.	49-7-7.	Plans and programs to carry out chapter; required provisions.
49-7-2.	Definitions.	49-7-8.	Rules and regulations.
49-7-3.	Persons to whom agencies may offer services.	49-7-9.	Construction of chapter.
49-7-4.	Services may be free.		
49-7-5.	Right to refuse services.		
49-7-6.	Right of employee to refuse to offer services.		

Cross references. — Female contraceptive devices; insurance coverage, § 33-24-59.6.

Law reviews. — For article, “Child Welfare and Future Persons,” see 43 Ga. L. Rev. 367 (2009).

For note, “Conceiving Equality: Infertility-Related Illness Under the Pregnancy Discrimination Act,” see 26 Ga. St. U.L. Rev. 1361 (2010).

49-7-1. Short title.

This chapter shall be known and may be cited as the “Family-Planning Services Act.” (Ga. L. 1966, p. 228, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 45, 46.

49-7-2. Definitions.

As used in this chapter, the term:

- (1) “Agencies” means the department, county boards of health, health districts, county departments of family and children services, and district departments of family and children services.
- (2) “Family-planning services” means counseling and interviews with trained personnel regarding birth control, infertility, and family-planning methods and procedures; distribution of literature relating to birth control, infertility, and family planning; referral to licensed physicians or local health departments for consultation, examination, tests, medical treatment, and prescriptions for the purposes of birth control, infertility, and family planning; and, to the extent prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices, and similar products used for birth control and family planning. (Ga. L. 1966, p. 228, § 2.)

Administrative rules and regulations. — Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-21.

RESEARCH REFERENCES

ALR. — Validity of regulations as to contraceptives or the dissemination of birth control information, 96 ALR2d 955.

49-7-3. Persons to whom agencies may offer services.

Within the limitations of the funds available to such agencies, all agencies are authorized to offer family-planning services to any person who is in any one or more of the following classifications:

- (1) Married;
- (2) The parent of at least one child;
- (3) Pregnant; or
- (4) Requesting such services. (Ga. L. 1966, p. 228, § 3; Ga. L. 1968, p. 558, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Any person requesting family planning services is eligible. — General Assembly intended to make any person requesting family-planning services eligible to receive those services regardless of whether that person is married, pregnant, or the parent of at least one child. 1971 Op. Att'y Gen. No. 71-177.

Minor's ability to consent to treatment determined by pregnancy or

childbirth. — Whether a minor, unmarried female under the age of 18 years can consent to medical treatment for herself when offered in conjunction with family-planning services would depend in each instance on a determination of whether the medical treatment was given in connection with pregnancy or childbirth. 1971 Op. Att'y Gen. No. 71-177.

49-7-4. Services may be free.

Agencies may support family-planning services at no cost to the recipients of such services in accordance with rules and regulations of said agencies. (Ga. L. 1966, p. 228, § 4.)

RESEARCH REFERENCES

ALR. — Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

49-7-5. Right to refuse services.

The refusal of any person to accept family-planning services shall in no way affect the right of such person to receive public assistance or public health services or to avail himself of any other public benefit. The employees of the agencies engaged in the administration of this chapter shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual; and nothing in this chapter shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family-planning services. (Ga. L. 1966, p. 228, § 5.)

49-7-6. Right of employee to refuse to offer services.

Any employee of the agencies engaged in the administration of this chapter may refuse to accept the duty of offering family-planning services to the extent that such duty is contrary to such employee's personal religious beliefs; and such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in his employment, for suspension from employment, or for any loss in pay or other benefits. The directors or supervisors of such agencies shall be authorized, however, to reassign the duties of any such employees in order to carry out this chapter effectively. (Ga. L. 1966, p. 228, § 6.)

Cross references. — Religious freedom, U.S. Const., amend. 1 and Ga. Const. 1983, Art. I, Sec. I, Para. III.

RESEARCH REFERENCES

ALR. — Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

49-7-7. Plans and programs to carry out chapter; required provisions.

The department is authorized and directed to develop plans and programs to carry out this chapter. Such plans and programs shall include, but shall not be limited to, provisions for:

- (1) A training program offered by the department for its employees who are in contact with and counsel those persons likely to desire family-planning services. Such training program should be designed to provide such employees with complete information regarding family planning and birth control and all matters related thereto; and

(2) A systematic plan for coordinating the activities of the department and its counterparts at the county and district level in the area of family-planning services. (Ga. L. 1966, p. 228, § 7.)

RESEARCH REFERENCES

ALR. — Propriety of prophylactic availability programs, 52 ALR5th 477.

49-7-8. Rules and regulations.

The board is authorized and directed to adopt and promulgate rules and regulations to carry out this chapter. Such rules and regulations shall provide the necessary requirements and guides for county and district departments of health and departments of family and children services. (Ga. L. 1966, p. 228, § 8.)

49-7-9. Construction of chapter.

This chapter shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs and to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to ensure a complete freedom of choice in pursuance of his constitutional rights. (Ga. L. 1966, p. 228, § 9.)

OPINIONS OF THE ATTORNEY GENERAL

Any person requesting family planning services eligible. — Legislature intended to make any person requesting family planning services eligible to receive

those services regardless of whether that person is married, pregnant, or the parent of at least one child. 1971 Op. Att'y Gen. No. 71-177.

CHAPTER 8

ECONOMIC REHABILITATION SERVICES

Sec.		Sec.	
49-8-1.	Short title.	49-8-7.	Opportunity to accept or reject proposals; services must meet minimum requirements of department; utilization of existing service delivery systems; compliance with federal legislation [Repealed].
49-8-2.	Purpose of chapter.		
49-8-3.	Definitions.		
49-8-4.	Administration of chapter.		
49-8-5.	Distribution of funds; local boards of directors; audits; bonding of agency employees.		
49-8-6.	Authorized and unauthorized activities of local agencies.		

49-8-1. Short title.

This chapter shall be known and may be cited as “The Economic Rehabilitation Act of 1975.” (Ga. L. 1975, p. 1645, § 1; Ga. L. 1990, p. 1436, § 1.)

49-8-2. Purpose of chapter.

It is the purpose of this chapter to provide for the administration, allocation, and distribution of funds from the Community Services Block Grant and other funding sources; to provide for the definition of a community action agency; to continue a flexible and decentralized system of state, regional, and local programs; to provide the support for services and activities designed to promote individual and family self-sufficiency and to provide emergency services; to encourage local and state-wide interagency collaboration and coordination; to assist local communities in the establishment of demonstration programs to meet the unmet needs of their citizens; and to provide the fiscal support needed to assure the continuation of community action agencies as grantees for federal, state, and other moneys. (Ga. L. 1975, p. 1645, § 3; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 1.)

Administrative rules and regulations. — Hospital care for the indigent, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-5.

49-8-3. Definitions.

As used in this chapter, the term:

- (1) “Board of directors” means the policy-making board of a community action agency.

(2) “Community action agency” means a public or private nonprofit corporation which was a recipient of community services block grant funds on January 1, 1989, or its successors.

(3) “Director” means the person designated by the commissioner of human services to effect the coordination and fiscal accountability of the community services authorized by this chapter.

(4) “Outreach” means staff capability to locate eligible clients, determine and evaluate needs, furnish information, gather data, make referrals, secure transportation, and assist clients in locating existing resources or assist in developing needed resources where none exist.

(5) “Poverty guideline” means the sliding scale of family incomes revised periodically and published as a poverty index in the Federal Register. (Ga. L. 1975, p. 1645, § 2; Ga. L. 1989, p. 1317, § 6.2; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 2; Ga. L. 2009, p. 453, § 2-4/HB 228.)

49-8-4. Administration of chapter.

(a) For purposes of administration, responsibility for the coordination of community services and fiscal accountability shall be determined by the commissioner of human services.

(b) The director is authorized to issue special instructions or rules and regulations as necessary to carry out the intent of this chapter. (Ga. L. 1975, p. 1645, § 4; Ga. L. 1990, p. 1436, § 1; Ga. L. 2009, p. 453, § 2-26/HB 228.)

49-8-5. Distribution of funds; local boards of directors; audits; bonding of agency employees.

(a) Moneys appropriated for the purposes of this chapter shall be allocated by contract with community action agencies. Such allocations shall be approved by the director only upon the submission of a proposal prepared by the agency and approved by the board of directors of the community action agency involved.

(b) Moneys appropriated for the purposes of this chapter and distributed by means of contracts with community action agencies shall continue to include the Community Services Block Grant. Not less than 90 percent of the community services block grant funds allocated for the State of Georgia shall be distributed to community action agencies by means of contracts with the community action agencies.

(c) The community services block grant funds shall continue to be distributed to each community action agency utilizing a formula based

upon a pro rata share of Georgia's poverty population contained in each agency's service area.

(d) No funds may be allocated to any community action agency which does not have a policy guaranteeing nondiscrimination in the delivery of services.

(e) No funds may be allocated to any community action agency which does not have a policy-making board of directors. The membership of such board must be made up of no fewer than one-third democratically selected representatives of the client group and no more than one-third public officials or their designees. The remainder of the board shall be composed of members appointed from the public sector.

(f) The director shall be responsible for ensuring that at least an annual fiscal and programmatic audit be conducted of each community action agency to ensure that contract awarded funds are properly and legally utilized and disbursed in accordance with the intentions of this chapter. All employees of each community action agency who handle funds of the agency shall be bonded by a licensed bonding company. (Ga. L. 1975, p. 1645, § 5; Ga. L. 1989, p. 1317, § 6.21; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 3.)

Cross references. — Area planning and development commissions generally, § 50-8-30 et seq.

49-8-6. Authorized and unauthorized activities of local agencies.

(a) Each community action agency shall use funds available to it under this chapter and other sources for the planning, operation, outreach, and evaluation of a variety of community service pilot programs designed to assist the economically disadvantaged and other persons to achieve self-sufficiency. Community action agencies shall maintain a coordinating role in the community.

(b) No community action agency, its board members, its executive officer, or its employees shall be authorized to use funds, facilities, or equipment owned by or available to the agency, including, but not limited to, stationery, postage, duplicating machines, and telephones, in behalf of any candidate for elective office or any political party or in support of any position on a question of public policy which is the subject of a referendum in the area in which such agency is located. No community action agency shall engage in the manufacture, distribution, display, advertising, or mailing of any printed materials in behalf of any candidate for elective office or any political party or in support of any position on a question of public policy which is the subject of a referendum in the area in which such agency is located.

(c) Work plans submitted to the director must be approved in advance by the board of directors described in paragraph (1) of Code Section 49-8-3. (Ga. L. 1975, p. 1645, § 6; Ga. L. 1990, p. 1436, § 1.)

49-8-7. Opportunity to accept or reject proposals; services must meet minimum requirements of department; utilization of existing service delivery systems; compliance with federal legislation.

Repealed by Ga. L. 1990, p. 1436, § 1, effective July 1, 1990.

Editor's notes. — This Code section 1982, p. 1285, § 2; and Ga. L. 1983, p. 3, was based on Ga. L. 1982, p. 1285, § 1; § 38. Code 1981, § 49-8-7, enacted by Ga. L.

CHAPTER 9

TRANSFER OF DIVISION OF REHABILITATION SERVICES TO DEPARTMENT OF LABOR

Article 1		Sec.	
General Provisions			
Sec.			
49-9-1.	Definitions.	49-9-14.	Rights not transferable; exempt from creditors.
49-9-2.	Creation of the Georgia Vocational Rehabilitation Services Board.	49-9-15.	Coverage by a hospitalization or medical insurance policy.
49-9-3.	Duties of executive director of Georgia Vocational Rehabilitation Agency.	49-9-16.	Lien upon causes of actions; procedure for perfecting lien; notice; fee; releases and covenants not to sue.
49-9-4.	Creation of Georgia Vocational Rehabilitation Agency; function.	49-9-17.	Authorization to retain title; authorization to sell; surplus; receipts; deposit of funds received.
49-9-5.	Provision of services to persons with disabilities.	49-9-18.	Confidentiality; penalty.
49-9-6.	Authorization to utilize funds.	49-9-19.	Governing prohibitions.
49-9-7.	Cooperation to carry out the purposes of federal statutes.	49-9-20.	Rights of General Assembly to amend or repeal chapter.
49-9-8.	Office of State Treasurer designated custodian of federal moneys.	49-9-21.	Delivery of deaf-blind services and techniques leading to maximum independence; integration.
49-9-9.	Budget estimates.	Article 2	
49-9-10.	Accepting and use of gifts.	Vending Facilities on State Property	
49-9-11.	Residency requirement; financial need.	49-9-40.	Definitions.
49-9-12.	Independent living program.	49-9-41.	Declaration of public policy; income.
49-9-13.	Entitlement to hearing if aggrieved.	49-9-42.	Operation of vending facilities on state property; preference for licensed disabled persons.

Editor's notes. — The former chapter consisted of Code Sections 49-9-1 through 49-9-42, relating to vocational rehabilitation services, and was based on Ga. L. 1951, p. 516, §§ 1, 3-15, 23; Ga. L. 1956, p. 52, §§ 1, 2; Ga. L. 1956, p. 373, § 1; Ga. L. 1957, p. 274, § 1; Ga. L. 1959, p. 343, §§ 1, 2; Ga. L. 1961, p. 400, § 1; Ga. L. 1964, p. 386, §§ 1-3; Ga. L. 1969, p. 944, § 1; Ga. L. 1971, p. 89, § 1; Ga. L. 1972, p. 1015, §§ 1212, 1216; Ga. L. 1978, p. 239, § 1; Ga. L. 1979, p. 132, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 833, §§ 1, 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 49; Ga. L. 1995, p. 1302, §§ 12, 14, 16, and was repealed by Ga. L. 2000, p. 1137, § 12, effective July 1, 2001.

ARTICLE 1
GENERAL PROVISIONS

49-9-1. Definitions.

As used in this chapter, the term or terms:

(1) "Agency" means the Georgia Vocational Rehabilitation Agency created pursuant to Code Section 49-9-4.

(2) "Blind person" means a person who has:

(A) Not more than 20/200 central visual acuity in the better eye after correction; or

(B) An equally disabling loss of the visual field.

(3) "Board" means the Georgia Vocational Rehabilitation Services Board created pursuant to Code Section 49-9-2.

(4) "Director" means the agency executive director appointed pursuant to Code Section 49-9-3.

(5) "Disability to employment" means a physical or mental condition which constitutes, contributes to, or, if not corrected, will probably result in an impairment of occupational performance.

(6) "Occupational license" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Person with disabilities" means an individual having a physical or mental impairment that substantially limits one or more of the major life activities.

(8) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(9) "Regulations" means regulations made by the director with the approval of the board and promulgated in the manner prescribed by law.

(10) "Rehabilitation center" means a facility operated for the purpose of assisting in the rehabilitation of persons with disabilities which provides one or more of the following types of services:

(A) Testing, fitting, or training in the use of prosthetic devices;

(B) Prevocational or conditioning therapy;

(C) Physical, corrective, or occupational therapy; or

(D) Adjustment training or evaluation or control of special disabilities; or a facility in which a coordinated approach is made to the physical, mental, and vocational evaluation of persons with disabilities and an integrated program of physical restoration and relating training is provided under competent professional supervision and direction.

(11) “Rehabilitation training” means all necessary training provided to a person with disabilities to compensate for his or her disability to employment, including, but not limited to, manual preconditioning, relating, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities.

(12) “Vocational rehabilitation” and “vocational rehabilitation services” mean any service, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a person with disabilities for his or her disability to employment and to enable such individual to engage in a remunerative occupation.

(13) “Workshop” means a place where any manufacture or handwork is carried on and which is operated for the primary purpose of providing rehabilitative activities, including the use of monetary rewards as an incentive practice for persons with disabilities unable to engage in the competitive labor market. Persons receiving services in workshops shall not be considered as employees of the state for workers’ compensation or any other purposes. (Code 1981, § 34-15-1, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-1, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-1 as present Code Section 49-9-1; added paragraph (1); redesignated former paragraph (1) as paragraph (2); added paragraph (3); deleted former paragraphs (2) and (3), which read: “(2) ‘Commissioner’ means the Commissioner of Labor.

“(3) ‘Department’ means the Department of Labor.”; substituted “agency executive director appointed pursuant to Code Section 49-9-3” for “official of the division who is charged with the administration of

its functions under this chapter” at the end of paragraph (4); deleted former paragraph (6), which read: “(6) ‘Division’ means the Division of Rehabilitation Services of the Department of Labor.”; redesignated former paragraphs (7) through (14) as present paragraphs (6) through (13), respectively; substituted “director with the approval of the board” for “Commissioner” in paragraph (9); and deleted “retirement,” following “compensation” near the end of the last sentence of paragraph (13).

49-9-2. Creation of the Georgia Vocational Rehabilitation Services Board.

(a) There is created the Georgia Vocational Rehabilitation Services Board. The board shall consist of nine members who work or have

worked in the area of vocational rehabilitation or who are a part of the vocational rehabilitation community; provided, however, that five members shall be persons with disabilities or family members of persons with disabilities.

(b) The members of the board shall be appointed by the Governor. The first such members shall be appointed by the Governor to take office on July 1, 2012, for initial terms as follows: Three such members shall be appointed for terms of one year; three such members shall be appointed for terms of two years; and three such members shall be appointed for terms of three years. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board. The term of the chairperson shall be established by rules of the board.

(f) A quorum for transacting business shall be determined by the members of the board.

(g) The members of the board shall receive a per diem allowance and expenses as shall be set and approved by the Office of Planning and Budget in conformance with rates and allowances set for members of other state boards.

(h) In addition to the powers and duties set forth in this chapter, the board shall recommend to the Governor and the General Assembly changes in state programs, statutes, policies, budgets, and standards relating to vocational rehabilitation services, the improvement of coordination among state and local agencies that provide vocational rehabilitation services, and the improvement of the condition of citizens who are in need of vocational rehabilitation services. (Code 1981, § 49-9-2, enacted by Ga. L. 2012, p. 303, § 1/HB 1146.)

Effective date. — This Code section became effective July 1, 2012.

49-9-3. Duties of executive director of Georgia Vocational Rehabilitation Agency.

(a) There shall be an executive director of the Georgia Vocational Rehabilitation Agency nominated by the Governor and approved by the board. The director shall serve during the term of the Governor by whom he or she is appointed and at the pleasure of the board. If the Governor's term expires and the incoming Governor has not made a nomination or such nomination has not been approved by the board, the current director shall serve until a replacement is nominated by the incoming Governor and approved by the board.

(b) In carrying out his or her duties under this chapter, the director of the Georgia Vocational Rehabilitation Agency:

(1) Shall, with the approval of the board, prepare such regulations for promulgation by the board as he or she finds necessary to carry out the purposes of this chapter;

(2) Shall, with the approval of the board, prepare such policies and procedures as he or she finds necessary for the purposes of this chapter and establish appropriate subordinate administrative units within the agency;

(3) Shall recommend to the board for appointment such personnel as he or she deems necessary for the efficient performance of the functions of the agency;

(4) Shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the General Assembly, estimates of sums required for carrying out this chapter and estimates of the amounts to be made available for this purpose from all sources;

(5) Shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter;

(6) May, with the approval of the board, delegate to any officer or employee of the agency such of his or her powers and duties, except the making of regulations and the appointment of personnel, as he or she finds necessary to carry out the purposes of this chapter; and

(7) Is designated as the administrator of a program provided under Section 221 of the federal Social Security Act, relating to disability adjudication services. The director shall receive, notwithstanding any other provision of law and in addition to his or her regular compensation, such compensation and allowance as may be augmented from grants by the appropriate federal agency in such amount as is determined by the federal agency to be commensurate

with the duties imposed by Section 221 of the federal Social Security Act. (Code 1981, § 34-15-3, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-3, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-3 as present Code Section 49-9-3, and added subsection (a); designated the existing provisions as subsection (b); throughout subsection (b), substituted “board” for “Commissioner” and substi-

tuted “agency” for “division”; and substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” near the end of the introductory paragraph of subsection (b).

49-9-4. Creation of Georgia Vocational Rehabilitation Agency; function.

(a)(1) The Georgia Vocational Rehabilitation Agency is created and established to perform the functions and assume the duties, powers, and authority exercised on June 30, 2012, by the Division of Rehabilitation Services within the Department of Labor including the disability adjudication section and the Roosevelt Warm Springs Institute for Rehabilitation, and such division shall be reconstituted as the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(2) The Georgia Vocational Rehabilitation Agency shall be assigned to the Department of Human Services for administrative purposes only, as prescribed in Code Section 50-4-3.

(3) On and after July 1, 2012, the powers, functions, duties, programs, institutions, and authority of the Georgia Vocational Rehabilitation Agency relating to the former Division of Rehabilitation Services within the Department of Labor shall be performed and exercised by the Georgia Vocational Rehabilitation Agency pursuant to this article. The Georgia Vocational Rehabilitation Agency shall take all necessary steps to ensure continuity of services for the vocational rehabilitation of persons with disabilities during such transfer.

(b) The agency shall be administered by a director appointed pursuant to Code Section 49-9-3. The policy-making functions which were vested in the Department of Labor pertaining to the Division of Rehabilitation Services are vested in the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(c) Any proceedings or other matters pending before the Division of Rehabilitation Services of the Department of Labor on June 30, 2012, which relate to the functions transferred to the Georgia Vocational Rehabilitation Agency shall be transferred to the agency on July 1, 2012.

(d) The Georgia Vocational Rehabilitation Agency shall, from July 1, 2012, assume possession and control of all records, papers, equipment, supplies, office space, and all other tangible property possessed and controlled by the Department of Labor as of June 30, 2012, in the Department of Labor's administration of the Division of Rehabilitation Services. All funds attributable to the Division of Rehabilitation Services and its programs and institutions from state, federal, and any other public or private source shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012.

(e) On July 1, 2012, the Georgia Vocational Rehabilitation Agency shall receive custody of any state owned real property in the custody of the Department of Labor on June 30, 2012, which pertains to the functions transferred from the Division of Rehabilitation Services to the Georgia Vocational Rehabilitation Agency.

(f) Prior to July 1, 2012, the Office of Planning and Budget shall calculate, in consultation with the Department of Labor, the amount of all funds of or attributable to the Division of Rehabilitation Services and its programs and institutions from any source that are used to provide administrative or other services within the Department of Labor, including funds from the disability adjudication section, the cost allocation system, and any indirect costs funding from the federal government or any other source. The amount calculated shall be transferred to the agency on July 1, 2012.

(g) All officers, employees, and agents of the Division of Rehabilitation Services who, on June 30, 2012, are engaged in the performance of a function or duty which shall be vested in the Georgia Vocational Rehabilitation Agency on July 1, 2012, by this chapter, shall be automatically transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. An equivalent number of positions or funds of the Department of Labor which provide administrative support to the Division of Rehabilitation Services shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. Such persons shall be subject to the employment practices and policies of the Georgia Vocational Rehabilitation Agency on and after July 1, 2012, but consistent with the compensation and benefits of other employees of that department holding positions substantially the same as the transferred employees; the compensation and benefits of such transferred employees shall not be reduced. Employees who are subject to the rules of the State Personnel Board and who are transferred to the Georgia Vocational Rehabilitation Agency shall retain all existing rights under such rules. Accrued annual and sick leave shall be retained by said employees as employees of the Georgia Vocational Rehabilitation Agency. The Department of Labor shall be responsible for payment of the accrued Fair Labor Standards Act compensatory time possessed by said employ-

ees. Such accrued compensatory time shall be used by or paid to said employees prior to July 1, 2012.

(h)(1) The Georgia Vocational Rehabilitation Agency is the designated state unit for the vocational rehabilitation program.

(2) The Georgia Vocational Rehabilitation Agency shall conform to federal standards in all respects necessary for receiving federal grants and the director of the Georgia Vocational Rehabilitation Agency is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(3) The Georgia Vocational Rehabilitation Agency shall take all necessary steps to secure at a minimum the same level of benefits provided pursuant to relevant federal statutes and appropriations received by the Division of Rehabilitation Services of the Department of Labor prior to June 30, 2012. The department shall also amend the state plan if necessary to meet federal funding requirements.

(4) The Georgia Vocational Rehabilitation Agency is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the agency under this chapter. The agency is also authorized to contract for such professional services as may be necessary.

(5) Classified employees of the Georgia Vocational Rehabilitation Agency under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(i) The Georgia Vocational Rehabilitation Agency shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Labor which are in effect on June 30, 2012, and which relate to the functions of the Division of Rehabilitation Services. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(j) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2012, by the Department of Labor or the Division of Rehabilitation Services pertaining to the Division of Rehabilitation Services transferred to the Georgia Vocational Rehabilitation Agency by this chapter shall continue to exist; and none of these rights, privileges, entitlements, obligations, and duties are impaired or diminished by reason of the transfer of the functions to the Georgia Vocational

Rehabilitation Agency. In all such instances, the Georgia Vocational Rehabilitation Agency shall be substituted for the Department of Labor or the Division of Rehabilitation Services, and the Georgia Vocational Rehabilitation Agency shall succeed to the rights, privileges, entitlements, and duties under such contracts, leases, agreements, and other transactions.

(k) The Georgia Vocational Rehabilitation Agency shall conform all service delivery regions to the state service delivery regions provided in subsection (a) of Code Section 50-4-7. (Code 1981, § 34-15-2, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2009, p. 453, § 2-17/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Code 1981, § 49-9-4, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146; Ga. L. 2012, p. 446, § 2-45/HB 642; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-2 as present Code Section 49-9-4, and re-wrote this Code section. The second 2012 amendment, effective July 1, 2012, in the fourth sentence of subsection (d) (now subsection (g)), substituted “rules of the State Personnel Board” for “State Personnel Administration”, and substituted “such rules” for “the State Personnel Administration”; and substituted “State Personnel Board” for “State Personnel Administration” at the end of paragraph (e)(4) (now paragraph (h)(5)).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsections (d) and (g).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

49-9-5. Provision of services to persons with disabilities.

The agency shall provide the services authorized by this chapter to persons with disabilities determined to be eligible therefor; and, in carrying out the purposes of this chapter, the agency is authorized, among other things:

(1) To cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this chapter to persons with disabilities; in studying the problems involved therein; and in establishing, developing, and providing, in conformity with the purposes of this chapter, such programs, facilities, and services as may be necessary or desirable;

(2) To enter into reciprocal agreements with other states to provide for the services authorized by this chapter to residents of the state concerned;

(3) To conduct research and compile statistics relating to the provision of services or the need of services by persons with disabilities;

(4) To license blind persons or other persons with disabilities to operate vending facilities under its supervision and control, subject to the terms and conditions provided in regulations, policies, and procedures issued pursuant to Code Section 49-9-3, on:

(A) State property;

(B) County or municipal property;

(C) Federal property, pursuant to delegation of authority under the Randolph-Sheppard Act, 20 U.S.C. Section 107(b), and any amendment thereto or any act of Congress relating to this subject; and

(D) Private property; and

(5) To provide for the establishment, supervision, and control of suitable business enterprises to be operated by persons with disabilities. (Code 1981, § 34-15-4, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-5, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146; Ga. L. 2013, p. 141, § 49/HB 79.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-4 as present Code Section 49-9-5; in the introductory paragraph of this Code section, substituted “agency” for “department, through the division,” near the beginning, and substituted “agency” for “division” near the end; and substituted “Code Section 49-9-3” for “paragraphs (1) and (2) of Code Section 34-15-3” near the

end of the introductory language of paragraph (4).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “under the Randolph-Sheppard Act, 20 U.S.C. Section 107(b),” for “under the Randolph-Sheppard Act (20 U.S. Code, Section 107b)(49 Stat. 1559)” in subparagraph (4)(C).

49-9-6. Authorization to utilize funds.

The agency is authorized to utilize funds made available from appropriations by Congress, by gifts or grants from private sources, by appropriations of the General Assembly, or by transfer of funds from other state departments for the purpose of establishing and operating rehabilitation centers and workshops. (Code 1981, § 34-15-5, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-6, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-5 as present Code Section 49-9-6,

and substituted “agency” for “Division of Rehabilitation Services” near the beginning of this Code section.

49-9-7. Cooperation to carry out the purposes of federal statutes.

The agency is empowered and directed to cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this chapter. The agency is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes and appropriations, to administer any legislation pursuant thereto enacted by this state, to direct the disbursement and administer the use of all funds provided by the federal government or this state for the purposes of this chapter, and to do all things necessary to ensure the vocational rehabilitation of persons with disabilities. (Code 1981, § 34-15-6, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-7, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-6 as present Code Section 49-9-7; substituted “agency” for “department,” through the division,” near the beginning of the first sentence and substituted “agency” for “department” near the beginning of the second sentence.

49-9-8. Office of State Treasurer designated custodian of federal moneys.

The Office of the State Treasurer is designated as custodian of all moneys received from the federal government for the purpose of carrying out any federal statutes pertaining to the purpose of this chapter. The Office of the State Treasurer shall make disbursements from such funds and all state funds available for such purposes, upon certification in the manner provided in Code Section 49-9-3. (Code 1981, § 34-15-7, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Code 1981, § 49-9-8, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-7 as present Code Section 49-9-8, and substituted “Code Section 49-9-3” for “paragraph (5) of Code Section 34-15-3” at the end of this Code section.

49-9-9. Budget estimates.

Budget estimates of the amount of appropriations needed each fiscal year for vocational rehabilitation services and for the administration of the programs under this chapter shall be submitted by the director to the board and, upon approval by the board, shall be included in the estimates made by the board to the Office of Planning and Budget. In the event federal funds are available to the state for vocational

rehabilitation purposes, the Georgia Vocational Rehabilitation Agency is authorized to comply with such requirements as may be necessary to obtain said federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and Constitution. In the event Congress fails in any year to appropriate funds for grants-in-aid to the state for vocational rehabilitation purposes, the board shall include as a part of its budget a request for adequate state funds for vocational rehabilitation purposes. (Code 1981, § 34-15-8, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-9, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-8 as present Code Section 49-9-9; substituted “board” for “Commissioner” throughout this Code section; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services” in the second sentence; and substituted “its budget” for “his or her budget” in the last sentence.

49-9-10. Accepting and use of gifts.

The director is authorized and empowered, with the approval of the board, to accept and use gifts made unconditionally, by will or otherwise, for carrying out the purposes of this chapter. Gifts made under such conditions as are proper and consistent with this chapter may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift. (Code 1981, § 34-15-9, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-10, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-9 as present Code Section 49-9-10, and substituted “board” for “Commissioner” near the beginning of this Code section.

49-9-11. Residency requirement; financial need.

(a) Vocational rehabilitation services shall be provided to any qualified individual who is a bona fide resident of the state.

(b) The financial need of eligible persons with disabilities will be considered in the provision of vocational rehabilitation services to the extent allowed by federal or other state law. (Code 1981, § 34-15-10, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-11, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-10 as present Code Section 49-9-11.

49-9-12. Independent living program.

The Georgia Vocational Rehabilitation Agency is the designated state unit for the independent living program. The independent living program is authorized to provide or contract for the provision of such services as may be needed to enable persons with disabilities to attain the maximum degree of independent living. The powers delegated and authorized in this Code section for the agency shall be in addition to those previously authorized by any other law. The agency is authorized to cooperate with any federal agency in the administration of such a program. (Code 1981, § 34-15-11, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-12, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-11 as present Code Section 49-9-12; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilita-

tion Services of the Department of Labor” in the first sentence; substituted “agency” for “division” in the third sentence; and substituted “agency” for “department” in the last sentence.

49-9-13. Entitlement to hearing if aggrieved.

Any individual applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the agency shall be entitled, in accordance with regulations, to a hearing in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and in accordance with applicable federal laws and regulations. (Code 1981, § 34-15-12, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-13, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-12 as present Code Section 49-9-13, and substituted “agency” for “division” near the middle of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, a comma was inserted following “Georgia Administrative Procedure Act”.

49-9-14. Rights not transferable; exempt from creditors.

Any rights of persons with disabilities to maintenance under this chapter shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors. (Code 1981, § 34-15-13, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-14, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-13 as present Code Section 49-9-14.

49-9-15. Coverage by a hospitalization or medical insurance policy.

Where a person with disabilities who receives vocational rehabilitation services is covered by a hospitalization or medical insurance policy, the Georgia Vocational Rehabilitation Agency shall be subrogated to the rights of such person with disabilities to recover in an amount not to exceed the cost of vocational rehabilitation services rendered by the Georgia Vocational Rehabilitation Agency, exclusive of those services for which eligibility is not predicated on the need for financial assistance. Where the person with disabilities receives vocational rehabilitation services without disclosing that he or she is covered by a hospitalization or medical insurance policy, he or she shall be liable therefor to the Georgia Vocational Rehabilitation Agency in an amount not to exceed the cost of rehabilitation services rendered, exclusive of those services for which eligibility is not predicated on the need for financial assistance, or in an amount not to exceed the insurance reimbursement received, whichever is the lesser. (Code 1981, § 34-15-14, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-15, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-14 as present Code Section 49-9-15, and substituted "Georgia Vocational Re-

habilitation Agency" for "Division of Rehabilitation Services" throughout this Code section.

49-9-16. Lien upon causes of actions; procedure for perfecting lien; notice; fee; releases and covenants not to sue.

Where a person with disabilities who receives vocational rehabilitation services is entitled to recover damages for said injuries, the Georgia Vocational Rehabilitation Agency shall have a lien, in an amount not to exceed the cost of rehabilitation services rendered, upon any and all causes of action accruing to the individual to whom such services were furnished, or to the legal representative of such individual, on account of injuries giving rise to such cause of action and which necessitated such rehabilitation services, subject, however, to any attorney's lien. In order to perfect such lien, the Georgia Vocational Rehabilitation Agency shall file in the office of the clerk of the superior court of the county wherein the individual resides a verified statement setting forth the name and address of such individual; the name and address of the Georgia Vocational Rehabilitation Agency; the amount claimed to be due for such vocational rehabilitation services; and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured individual, or the legal representative of such individual, to be liable for damages arising from such injuries. The Georgia Vocational Rehabilitation Agency shall also,

within one day after the filing of such claim or lien, mail a copy thereof to any person, firm, or corporation so claimed to be liable for such damages to the addresses as given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms, or corporations liable for such damages, whether or not they are named in such claim or lien. The clerk of the court shall endorse thereon the date and hour of filing in the hospital lien book, along with the name of the claimant, the injured person, the amount claimed, and the names and addresses of those claimed to be liable for damages. Such information shall be recorded in the name of the injured individual. The clerk shall be paid \$1.00 as his or her fee for such filing. No release for such cause or causes of action or any judgment thereon, or any covenant not to sue thereon, shall be valid or effectual as against such lien unless the holder thereof shall join therein or execute a release of such lien; and the claimant of such lien may enforce the lien by an action against the person, firm, or corporation liable for such damages. (Code 1981, § 34-15-15, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-16, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-15 as present Code Section 49-9-16; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilita-

tion Services” throughout this Code section; deleted a comma following “individual resides” near the middle of the second sentence; and inserted “or her” in the next to the last sentence.

49-9-17. Authorization to retain title; authorization to sell; surplus; receipts; deposit of funds received.

The agency is authorized to retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for use of persons with disabilities and to repossess and transfer them for the use of other persons with disabilities. The board is authorized to offer for sale any items acquired in the operation of the program under this chapter when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage. When any such surplus equipment is sold or exchanged, a receipt for it shall be taken from the purchaser showing the consideration given for such equipment and shall be forwarded to the Office of the State Treasurer; and any funds received by the agency pursuant to any such transactions shall be deposited in the state treasury in the appropriate federal or state rehabilitation account and shall be available for expenditures for any purposes consistent with this chapter. (Code 1981, § 34-15-16, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Code 1981, § 49-9-17, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-16 as present Code Section 49-9-17; substituted “agency” for “division” in the

first and third sentences, and substituted “board” for “Commissioner” near the beginning of the second sentence.

49-9-18. Confidentiality; penalty.

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, policies, and procedures, for any person or persons to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records. Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Code 1981, § 34-15-17, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-18, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-17 as present Code Section 49-9-18.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 34-15-17 is not an offense designated as

one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.

49-9-19. Governing prohibitions.

Employees of the agency engaged in functions under this chapter shall be governed by the prohibitions in the rules and regulations of the State Personnel Board and the federal Office of Personnel Management from participation in political activity. (Code 1981, § 34-15-18, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-19, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-18 as present Code Section 49-9-19,

and substituted “agency” for “department” near the beginning of this Code section.

49-9-20. Rights of General Assembly to amend or repeal chapter.

The General Assembly reserves the right to amend or repeal all or any part of this chapter at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature

to amend or repeal this chapter at any time. (Code 1981, § 34-15-19, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-20, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-19 as present Code Section 49-9-20.

49-9-21. Delivery of deaf-blind services and techniques leading to maximum independence; integration.

(a) The Georgia Vocational Rehabilitation Agency shall oversee the delivery of deaf-blind services and techniques provided by an organization pursuant to subsection (c) of this Code section that lead to maximum independence and employment for individuals with both a hearing and a vision loss. These services shall include, but not be limited to, transition of deaf-blind youth from education to the work force; identification of deaf-blind individuals in Georgia; communication access for varying groups of individuals and their unique needs; training deaf-blind individuals in orientation and mobility, rehabilitation, and Braille; utilization of support service providers to function as sighted guides, communication facilitators, and providers of transportation; support and increase in the number of qualified sign language interpreters working with deaf-blind individuals; use of adaptive technologies, such as computers, telebrailers, and TTY devices; strategies and techniques to assist deaf-blind individuals in obtaining the highest level of independence possible; and peer support which provides access to information, people, and places.

(b) The agency shall, to the greatest extent possible, integrate the services and techniques required pursuant to subsection (a) of this Code section into its standard practices and procedures with the objective of providing appropriate services in an appropriate manner to individuals in the deaf-blind community.

(c) Subject to appropriations by the General Assembly, the Georgia Vocational Rehabilitation Agency shall retain an organization knowledgeable on deaf-blind issues to provide the services and techniques included in subsection (a) of this Code section to deaf-blind individuals and to provide comprehensive training to agency staff on such services and techniques required pursuant to subsection (a) of this Code section. Such organization shall be retained no later than six months after funding from appropriations by the General Assembly has been made available for expenditure by the agency. (Code 1981, § 34-15-20, enacted by Ga. L. 2007, p. 257, § 1/SB 49; Ga. L. 2008, p. 324, § 34/SB 455; Code 1981, § 49-9-21, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-20 as present Code Section 49-9-21; substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in the first sentence of subsection (a); substituted “agency” for “division” in subsection (b) and in the first sentence of subsection (c); and, in subsection (c), substituted “Georgia Vocational Rehabilitation

Agency” for “Division of Rehabilitation Services” in the first sentence, and substituted “agency” for “department” at the end of the last sentence.

Cross references. — Deaf person defined, § 30-1-1. Individualized education program for blind students with evaluation of Braille skills, § 30-7-3. Blindness, education, screening, and treatment program, § 31-1-23.

ARTICLE 2

VENDING FACILITIES ON STATE PROPERTY

49-9-40. Definitions.

As used in this article, the term:

(1) “State property” means any building, land, or other real property owned, leased, or occupied by any department, commission, board, bureau, agency, public corporation, or other instrumentality of the state, including, but not limited to, the Georgia Building Authority, and any other real property in which the state has a legal or beneficial interest; provided, however, the term “state property” shall not include any property, real or personal, owned or leased or otherwise under the jurisdiction of the Board of Regents of the University System of Georgia, the Georgia Education Authority (University), or any county or independent school system of this state.

(2) “Vending facility” means vending stands, vending machines, snack bars, cart service, shelters, counters, and such other appropriate facilities and equipment as may be necessary for the sale of articles or services by licensed blind persons or other persons with disabilities, as prescribed by rules and regulations adopted by the agency. (Code 1981, § 34-15-40, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-40, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-40 as present Code Section 49-9-40,

and substituted “agency” for “department” at the end of paragraph (2).

49-9-41. Declaration of public policy; income.

To effectuate the purposes of this article, it is declared to be public policy of the state that on any state property where the board determines it to be feasible to establish a vending facility to be operated by

a licensed operator as provided in this article and where the agency or department or custodian of such property determines that such facility can be established without undue inconvenience to the operation being carried on in such state building or property, the preference accorded in this article shall require that such vending facility site not be deemed available for letting to competitive bidders for revenue-producing purposes unless the board declines to establish on such site a vending facility for blind persons or other persons with disabilities. The income to the agency or department or custodian controlling the space for such facility sites shall generally not be expected to exceed reimbursement for the cost of providing such facility site space and the services connected therewith; but in any case where such income exceeds those purposes, it shall be paid into the state treasury, subject to certification and audit. (Code 1981, § 34-15-41, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-41, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-41 as present Code Section 49-9-41; in the first sentence of this Code section, substituted “board” for “Commissioner of Labor” near the beginning, and substituted “board” for “Commissioner” near the end; and inserted “or department or custodian” near the beginning of the second sentence.

49-9-42. Operation of vending facilities on state property; preference for licensed disabled persons.

For the purpose of providing blind persons or other persons with disabilities with remunerative employment, enlarging their economic opportunities, and stimulating them to greater effort in striving to make themselves self-supporting, such blind persons or other persons with disabilities who are licensed by the Georgia Vocational Rehabilitation Agency shall be authorized to operate vending facilities on any state property where such vending facilities may be properly and satisfactorily operated by blind persons or other persons with disabilities. In authorizing the operation of vending facilities on state property, preference shall be given, so far as feasible, to blind persons or other persons with disabilities licensed by the Georgia Vocational Rehabilitation Agency as provided in this article; and the head of each department or agency in control of the maintenance, operation, and protection of state property shall, after consultation with the board and with the approval of the Governor, prescribe regulations designed to assure such preference (including assignment of vending machine income to achieve and protect such preference) for such licensed blind persons or other persons with disabilities without unduly inconveniencing such departments and agencies or adversely affecting the interests of the state. (Code 1981, § 34-15-42, enacted by Ga. L. 2000, p. 1137, § 1; Code 1981, § 49-9-42, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146.)

The 2012 amendment, effective July 1, 2012, redesignated former Code Section 34-15-42 as present Code Section 49-9-42, substituted "Georgia Vocational Rehabilitation Agency" for "Division of Rehabilita-

tion Services of the Department of Labor" in the first and second sentences, and substituted "board" for "Commissioner" near the middle of the second sentence.

CHAPTER 10

GEORGIA BOARD FOR PHYSICIAN WORKFORCE

Sec.	Sec.
49-10-1. Board for physician workforce; composition; expense allowances; staffing; advisory committees.	49-10-4. Power to make contracts; authority to adopt rules and regulations.
49-10-2. Purpose.	49-10-5 and 49-10-6 [Repealed].
49-10-3. Powers, duties, and responsibilities.	

Editor's notes. — Ga. L. 1998, p. 616, effective July 1, 1998, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 49-10-1 through 49-10-6, relating to the Joint Board of Family Practice, and was based on Ga. L. 1976, p. 1096, §§ 1 - 6; Ga. L. 1978, p. 923, §§ 1 - 3; Ga. L. 1979, p. 642, § 1; Ga. L. 1980, p. 571, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1984, p. 365, § 1; Ga. L. 1990, p. 1320, §§ 2 - 3.

Cross references. — Georgia Volunteers in Medicine Health Care Act, § 43-34-41.

Administrative rules and regulations. — General internal medicine student preceptorships, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-8.

Georgia Board for Physician Workforce, Official Compilation of the Rules and Regulations of the State of Georgia, Title 195.

49-10-1. Board for physician workforce; composition; expense allowances; staffing; advisory committees.

(a)(1) The Joint Board of Family Practice which existed on January 1, 1998, is continued in existence but on and after July 1, 1998, shall become and be known as the Georgia Board for Physician Workforce. The Georgia Board for Physician Workforce, referred to in this chapter as the "board," shall be attached to the Department of Community Health for administrative purposes only, as defined by Code Section 50-4-3, except that such department shall prepare and submit the budget for that board in concurrence with that board.

(2) The Georgia Board for Physician Workforce shall be composed of 15 members, all of whom are residents of this state, as follows:

(A) Five members shall be primary care physicians, at least three of whom shall be from rural areas;

(B) Five members shall be physicians who are not primary care physicians, at least three of whom shall practice in rural areas;

(C) Three members shall be representatives of hospitals which are not teaching hospitals, with at least two of those three members being representatives of rural, nonprofit hospitals;

(D) One member shall be a representative from the business community;

(E) One member shall have no connection with the practice of medicine or the provision of health care; and

(F) The physicians on the board shall represent a diversity of medical disciplines, including, but not limited to, women's health, geriatrics, and children's health. The board shall represent the gender, racial, and geographical diversity of the state.

(3) All members of the board shall be appointed by the Governor and confirmed by the Senate. The terms of office of all the members of the Joint Board of Family Practice shall expire July 1, 1998, but only at such time on or after that date when all 15 of the initial members of the Georgia Board of Physician Workforce have been appointed and qualified. No such initial member shall exercise any power under this chapter until all 15 members have been appointed and qualified. The initial members of the board who are appointed thereto shall take office for initial terms of office as follows:

(A) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to two-year terms of office;

(B) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to four-year terms of office; and

(C) The remainder of the board shall be appointed to six-year terms of office.

Thereafter, successors to such members shall be appointed for terms of six years. The Governor shall designate the term to which each initial member is appointed. All members shall serve until their successors are appointed and qualified. Members appointed under this paragraph shall be eligible to serve on the board until confirmed by the Senate at the session of the General Assembly next following their appointment.

(4) In case of a vacancy on the board by reason of death or resignation of a member or for any other cause other than the expiration of the member's term of office, the board shall by secret ballot elect a temporary successor. If the General Assembly is in session, the temporary successor shall serve until the end of that session. If the General Assembly is not in session, the temporary successor shall serve until the end of the session next following the vacancy or until the expiration of the vacated member's term of office,

whichever occurs first. The Governor shall appoint a permanent successor who shall be confirmed by the Senate. The permanent successor shall take office on the first day after the General Assembly adjourns and shall serve for the unexpired term and until his or her successor is appointed and qualified.

(5) The office on the board of a member thereof who fails to attend more than three consecutive regular meetings of the board, without excuse approved by resolution of the board, shall become vacant.

(b) The board shall annually elect from its membership a chair, a vice chair, and a secretary-treasurer by ballot. Meetings shall be held at the call of the chair or upon written request of a majority of the members. A majority of members then in office shall constitute a quorum and shall have the authority to act upon any matter properly brought before the board. The board shall keep permanent minutes and records of all its proceedings and actions.

(c) Each member of the board shall receive the same expense allowance per day as that received by a member of the General Assembly for each day or substantial portion thereof that such member of the board is engaged in the work of the board, in addition to such reimbursement for travel and other expenses as is normally allowed to state employees. No member of the board shall receive the above per diem for more than 30 days in any one calendar year.

(d) The Department of Community Health, with the concurrence of the board, shall have the authority to employ such administrative staff as is necessary to carry out the functions of the board. Such staff members shall be employed within the limits of the appropriations made to the board.

(e) The board, as it deems appropriate, shall have the authority to appoint advisory committees to advise the board on the fulfillment of its duties. The members of the advisory committees shall not receive any per diem or reimbursements; provided, however, that such members shall receive the mileage allowance provided for in Code Section 50-19-7 for the use of a personal car in connection with attendance at meetings called by the board. (Code 1981, § 49-10-1, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 1999, p. 296, § 21; Ga. L. 2000, p. 1421, § 2; Ga. L. 2011, p. 459, § 6/HB 509.)

The 2011 amendment, effective July 1, 2011, added “, at least three of whom shall be from rural areas” at the end of subparagraph (a)(2)(A); added “, at least three of whom shall practice in rural areas” at the end of subparagraph (a)(2)(B); and substituted “two of those three members being representatives of rural, non-

profit hospitals” for “one of those three members being a representative of a rural, nonprofit hospital” at the end of subparagraph (a)(2)(C).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “vice chair” was substituted for “vice-chair” in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2000, “Department of Community Health” was substituted for “Department of Community health” in subsection (d).

49-10-2. Purpose.

The purpose of the board shall be to address the health care workforce needs of Georgia communities through the support and development of medical education programs and to increase the number of physicians and health care practitioners practicing in underserved rural areas. (Code 1981, § 49-10-2, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 2011, p. 459, § 7/HB 509.)

The 2011 amendment, effective July 1, 2011, substituted “health care” for “physician” near the beginning, and added “and to increase the number of physicians and health care practitioners practicing in underserved rural areas” at the end.

Cross references. — Reimbursement of expenses for state employees generally, § 45-7-20 et seq.

Law reviews. — For comment on *Rogers v. Medical Ass’n*, 244 Ga. 151, 259 S.E.2d 85 (1979), as to unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

49-10-3. Powers, duties, and responsibilities.

The board shall have the following powers, duties, and responsibilities:

- (1) To locate and determine specific underserved areas of the state in which unmet priority needs exist for physicians and health care practitioners by monitoring and evaluating the supply and distribution of physicians and health care practitioners by specialty and geographical location;
- (2) To award service cancelable loans and scholarships pursuant to Part 6 of Article 7 of Chapter 3 of Title 20, Chapter 34 of Title 31, or as otherwise provided by law;
- (3) To approve and allocate state appropriations for family practice training programs, including but not limited to fellowships in geriatrics and other areas of need as may be identified by the board;
- (4) To approve and allocate state appropriations for designated pediatric training programs;
- (5) To approve and allocate any other state funds appropriated to the Georgia Board for Physician Workforce to carry out its purposes;
- (6) To coordinate and conduct with other state, federal, and private entities, as appropriate, activities to increase the number of graduating physicians and health care practitioners who remain in Georgia to practice with an emphasis on medically underserved areas of the state;

(7) To apply for grants and to solicit and accept donations, gifts, and contributions from any source for the purposes of studying or engaging one or more contractors to study issues relevant to medical education or implementing initiatives designed to enhance the medical education infrastructure of this state and to meet the physician and other health care practitioners workforce needs of Georgia communities; and

(8) To carry out any other functions assigned to the board by general law. (Code 1981, § 49-10-3, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 2009, p. 77, § 1/HB 49; Ga. L. 2011, p. 459, § 7/HB 509; Ga. L. 2012, p. 775, § 49/HB 942.)

The 2011 amendment, effective July 1, 2011, in paragraphs (1) and (6), inserted “and health care practitioners”; added paragraph (2); redesignated former paragraphs (2) through (7) as present paragraphs (3) through (8), respectively; and inserted “and other health care practitioners” near the end of paragraph (7).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “To award service” for “Award service” at the beginning of paragraph (2).

49-10-4. Power to make contracts; authority to adopt rules and regulations.

The board shall have the power to contract with other state and federal agencies, persons, corporations, associations, institutions, and authorities in carrying out its responsibilities. In addition, the board shall have the authority to adopt reasonable rules and regulations to carry out those responsibilities. (Code 1981, § 49-10-4, enacted by Ga. L. 1998, p. 616, § 1.)

49-10-5 and 49-10-6.

Repealed by Ga. L. 1998, p. 616, § 1, effective July 1, 1998.

Editor’s notes. — For information as to the repeal of these Code sections, see the Editor’s note at the beginning of the chapter.

TITLE 50
STATE GOVERNMENT

VOLUME 38

Chap.

1. General Provisions, 50-1-1 through 50-1-9.
2. Boundaries and Jurisdiction of the State, 50-2-1 through 50-2-28.
3. State Flag, Seal, and Other Symbols, 50-3-1 through 50-3-100.
4. Organization of Executive Branch Generally, 50-4-1 through 50-4-7.
5. Department of Administrative Services, 50-5-1 through 50-5-202.
- 5A. Office of State Treasurer, 50-5A-1 through 50-5A-11.
- 5B. State Accounting Office, 50-5B-1 through 50-5B-24.
6. Department of Audits and Accounts, 50-6-1 through 50-6-32.
7. Department of Economic Development, 50-7-1 through 50-7-80.
8. Department of Community Affairs, 50-8-1 through 50-8-242.
9. Georgia Building Authority, 50-9-1 through 50-9-111.
10. Georgia Development Authority, 50-10-1 through 50-10-10.
11. State Law Library, 50-11-1 through 50-11-10 [Repealed].
12. Commissions and Other Agencies, 50-12-1 through 50-12-147.

VOLUME 38A

13. Administrative Procedure, 50-13-1 through 50-13-44.
- 13A. Tax Tribunals, 50-13A-1 through 50-13A-20.
14. Open and Public Meetings, 50-14-1 through 50-14-6.
15. Public Lawsuits, 50-15-1 through 50-15-4.
16. Public Property, 50-16-1 through 50-16-183.
17. State Debt, Investment, and Depositories, 50-17-1 through 50-17-105.
18. State Printing and Documents, 50-18-1 through 50-18-135.

19. Transportation Services, 50-19-1 through 50-19-26.
20. Relations With Nonprofit Contractors, 50-20-1 through 50-20-8.
21. Waiver of Sovereign Immunity as to Actions Ex Contractu; State Tort Claims, 50-21-1 through 50-21-37.
22. Managerial Control Over Acquisition of Professional Services, 50-22-1 through 50-22-9.
23. Environmental Finance Authority, 50-23-1 through 50-23-35.
24. Drug-free Workplace, 50-24-1 through 50-24-6.
25. Georgia Technology Authority, 50-25-1 through 50-25-16.
26. Housing and Finance Authority, 50-26-1 through 50-26-22.
27. Lottery for Education, 50-27-1 through 50-27-104.
28. State Productivity Council, 50-28-1 through 50-28-5 [Repealed].
29. Information Technology, 50-29-1 through 50-29-12.
30. Institute for Community Business Development, 50-30-1 through 50-30-6 [Repealed].
31. Georgia Suggestion System, 50-31-1 through 50-31-7 [Repealed].
32. Georgia Regional Transportation Authority, 50-32-1 through 50-32-71.
33. Year 2000 Readiness, 50-33-1 through 50-33-6 [Repealed].
34. OneGeorgia Authority, 50-34-1 through 50-34-18.
35. Georgia Environmental Training and Education Authority, 50-35-1 through 50-35-13 [Repealed].
36. Verification of Lawful Presence Within United States, 50-36-1 through 50-36-4.
37. Guaranteed Energy Savings Performance Contracting, 50-37-1 through 50-37-8.

Cross references. — Institution and prosecution of criminal proceedings involving property of Department of Transportation, § 32-1-4 et seq. Transportation of trash, refuse, and garbage across state

boundaries for dumping without permission, § 36-1-16. Competition for public work bids, T. 36, C. 84.

Law reviews. — For article, "State-Created Property and Due Process

of Law: Filling the Void Left by Engquist
v. Oregon Department of Agriculture,” see
44 Ga. L. Rev. 161 (2009).

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
50-1-1.	Agency mailing lists; updating; restriction on mailing materials to officials no longer in office.	50-1-6.	Credit card payments on amounts due state and local governments.
50-1-2.	Privileges and exemptions accorded the Taipei Economic and Cultural Representatives Office.	50-1-7.	General Assembly findings; state authorized to administer programs.
50-1-3.	Poet laureate.	50-1-8.	Election to contractually provide to unmarried persons benefits, rights, or privileges provided to married persons.
50-1-4.	Employment position to remain open upon granting of involuntary separation benefits by state agency.	50-1-9.	Natural disaster defined; replacement of licenses, state identification cards, and other documents.
50-1-5.	Meetings by teleconference or other similar means.		

50-1-1. Agency mailing lists; updating; restriction on mailing materials to officials no longer in office.

(a) For the purpose of this Code section, the term “state agency” means a department, agency, board, commission, or authority of state government.

(b) Each state agency is required to update annually all mailing lists of the agency.

(c) No state agency shall mail publications or materials to a previously elected state officer who is no longer in office except upon written request. (Ga. L. 1980, p. 526, § 1.)

50-1-2. Privileges and exemptions accorded the Taipei Economic and Cultural Representatives Office.

The Taipei Economic and Cultural Representatives Office in the United States, while it maintains an office in the State of Georgia, shall be accorded the same privileges and exemptions concerning taxation, the operation of motor vehicles, education, immunity, and any other privileges and exemptions as provided by the Taiwan Relations Act, 22 U.S.C. Section 3301, et seq. (Ga. L. 1980, p. 46; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 334, § 30-1/HB 501.)

50-1-3. Poet laureate.

(a) There is created the position of poet laureate of the State of Georgia.

(b) The poet laureate shall be appointed by the Governor from a list of three nominees submitted to him by the Georgia Council for the Arts.

(c) The council shall submit the list of three nominees to the Governor within 30 days after the Governor takes the oath of office for a full term. The Governor shall appoint the poet laureate within 30 days after receiving the list of nominees. The poet laureate shall be appointed to serve for a term of office concurrent with the term of office of the Governor or until a successor is appointed and qualified as provided in this Code section.

(d) In the event of a vacancy in the office of poet laureate, the vacancy shall be filled in the same manner as the original appointment, and the person so appointed shall serve until a successor is appointed and qualified as provided in this Code section.

(e) Any person serving on April 13, 1981, in the position of poet laureate as created by executive order shall continue in the position and no appointment shall be effective under this Code section until such time as the person serving as poet laureate on April 13, 1981, either vacates the office or a vacancy occurs in the office in any other manner.

(f) The poet laureate shall be an honorary position and the person appointed shall receive no remuneration. (Ga. L. 1981, p. 1394, § 1; Ga. L. 1986, p. 174, § 1.)

50-1-4. Employment position to remain open upon granting of involuntary separation benefits by state agency.

(a) As used in this Code section, the term "state agency" means any department, agency, board, commission, or authority of the state or any political subdivision thereof, any employees of which are members of the Employees' Retirement System of Georgia.

(b) Any time a state employee entitled to receive involuntary separation retirement benefits pursuant to Code Section 47-2-123 is involuntarily separated from employment and such employee is granted such involuntary separation benefits, the employment position such employee held within a state agency at the time of such involuntary separation from service shall remain open and unfilled permanently. In addition, an amount equal to the sum of such employee's salary at the time of such involuntary separation from service and the cost of such employee's retirement with involuntary separation benefits shall be deleted permanently from the employing state agency's annual appropriations budget.

(c) The provisions of this Code section shall not apply to an employee who is involuntarily separated from service because of a mandatory retirement age or as a direct result of an Act of the General Assembly

which abolishes such employee's position. (Code 1981, § 50-1-4, enacted by Ga. L. 1993, p. 1817, § 1.)

50-1-5. Meetings by teleconference or other similar means.

(a) Unless specifically prohibited by the laws relating to a particular board, body, or committee, any board, body, or committee of state government may meet by teleconference or other similar means. The methods of meeting permitted under this Code section shall include telephone conference calls, meetings held through two-way interactive closed circuit television or satellite television signal, or any other similar method which allows each member of the board or body participating in the meeting to hear and speak to each other member participating in the meeting.

(b) Nothing in this Code section shall eliminate any otherwise applicable requirement for giving notice of any meeting. Likewise, nothing in this Code section shall create a requirement for giving notice of any meeting where it does not otherwise exist. The notice shall list each location where any member of the board, body, or committee plans to participate in the meeting if the meeting is otherwise open to the public; provided, however, it shall not be grounds to contest any actions of the board, body, or committee as provided in Code Section 50-14-1 if a member participates from a location other than the location listed in the notice. At a minimum, the notice shall list one specific location where the public can participate in the meeting if the meeting is otherwise open to the public. The notice shall further conform with the notice provisions of Code Section 50-14-1. Any meeting which is otherwise required by law to be open to the public shall be open to the public at each location listed in the notice or where any member of the board, body, or committee participates in the meeting.

(c) The provisions of this Code section shall be broadly construed to cover any board, body, or committee of state government which is required or authorized to hold any meeting concerning state government affairs, regardless of the name by which any such entity may be known. The provisions of this Code section are specifically made applicable to the legislative and judicial branches of state government as well as the executive branch. With respect to the judicial branch, however, this Code section shall not apply to actual court sessions but shall apply to other administrative or judicial proceedings in the judicial branch. With respect to the legislative branch, this Code section shall not apply to actual sessions of the Senate or the House of Representatives but shall apply to committee meetings and other administrative proceedings. (Code 1981, § 50-1-5, enacted by Ga. L. 1996, p. 1300, § 1; Ga. L. 2012, p. 218, § 15/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted “notice provisions of” for “provisions of ‘due notice’ as provided in” in the next-to-last sentence of subsection (b).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

50-1-6. Credit card payments on amounts due state and local governments.

(a) Notwithstanding any other provision of general or local law to the contrary, any officer or unit of state or local government who or which is required or authorized to receive or collect any payments to state or local government is authorized but not required to accept credit card payment of such amounts.

(b) This Code section shall be broadly construed to authorize but not require acceptance of credit card payments by:

(1) All departments, agencies, boards, bureaus, commissions, authorities, and other units of state government, by whatever name called;

(2) All officers, officials, employees, and agents of the state and such units of state government, by whatever name called;

(3) All political subdivisions of the state, including counties, municipalities, school districts, and local authorities;

(4) All departments, agencies, boards, bureaus, commissions, authorities, and other units of such political subdivisions, by whatever name called; and

(5) All officers, officials, employees, and agents of such units of political subdivisions.

(c) This Code section shall be broadly construed to authorize but not require acceptance of credit card payments of all types of amounts payable, including but not limited to taxes, license and registration fees, fines, and penalties. For purposes of this Code section, the term “credit card” shall be deemed to include credit cards, charge cards, and debit cards.

(d) The decision as to whether to accept credit card payments for any particular type of payment shall be made by the officer or board or other body having general discretionary authority over the manner of acceptance of such type of payments. If credit card payments are to be accepted, such officer or board or other body shall be authorized to adopt reasonable policies, rules, or regulations not in conflict with this Code section governing the manner of acceptance of credit card payments. However, no credit card payments shall be accepted for local ad valorem taxes without the formal agreement of the governing authority of the

political subdivision for whose benefit such taxes are collected, and no credit card payments shall be accepted for any state taxes or fees without formal approval by the State Depository Board. The officer or board or other body having the general discretionary authority over the manner of acceptance of such payments shall be authorized to enter into appropriate agreements with credit card issuers or other appropriate parties as needed to facilitate the acceptance of credit card payments. Without limiting the generality of the foregoing, such agreements may provide for the acceptance of credit card payments at a discount from their face amount or the payment or withholding of administrative fees from the face amount of such payments. Such discount or administrative fees may be authorized when the officer or board or other body determines that any reduction of revenue resulting from such discount or fees will be in the best interest of state or local government. Factors which may be considered in making such a determination may include but are not necessarily limited to improved governmental cash flow, reduction of governmental overhead, improved governmental financial security, or a combination of one or more of the foregoing together with the benefit of increased public convenience. Any such agreement shall provide that it may be canceled at any time by the affected officer or unit of state or local government, but the agreement may include provisions for a reasonable brief period of notice for cancellation.

(e) An officer or board or other body authorizing acceptance of credit card payments shall be authorized but not required to impose a surcharge upon the person making a payment by credit card so as to wholly or partially offset the amount of any discount or administrative fees charged to state or local government. The surcharge will be applied only when allowed by the operating rules and regulations of the credit card involved. When a party elects to make a payment to state or local government by credit card and such a surcharge is imposed, the payment of such surcharge shall be deemed voluntary by such party and shall be in no case refundable.

(f) No person making any payment by credit card to state or local government shall be relieved from liability for the underlying obligation except to the extent that state or local government realizes final payment of the underlying obligation in cash or the equivalent. If final payment is not made by the credit card issuer or other guarantor of payment in the credit card transaction, then the underlying obligation shall survive and state or local government shall retain all remedies for enforcement which would have applied if the credit card transaction had not occurred. No contract may modify the provisions of this subsection. This subsection, however, shall not make the underlying obligor liable for any discount or administrative fees paid to a credit card issuer or other party by state or local government.

(g) A state or local government officer or employee who accepts a credit card payment in accordance with this Code section and any applicable policies, rules, or regulations of state or local government shall not thereby incur any personal liability for the final collection of such payments. (Code 1981, § 50-1-6, enacted by Ga. L. 1996, p. 1509, § 1.)

Code Commission notes. — Ga. L. 1996, p. 1300, § 1 and Ga. L. 1996, p. 1509, § 1 both enacted a Code Section 50-1-5. Pursuant to Code Section 28-9-5, in 1996, the Code Section 50-1-5 enacted by Ga. L. 1996, p. 1509, § 1 was redesignated as Code Section 50-1-6.

50-1-7. General Assembly findings; state authorized to administer programs.

(a) The General Assembly finds and determines that:

(1) Federal law now provides at 42 U.S.C.A. Section 604a, and may hereafter provide under other federal laws, that subject to certain limitations states may:

(A) Administer and provide services under certain federal programs through contracts with charitable, religious, or private organizations; and

(B) Provide beneficiaries of assistance under certain federal programs with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations

but that such authority shall not preempt any provision of a state constitution or state statute that prohibits or restricts the expenditure of state funds in or by religious organizations;

(2) Article I, Section II, Paragraph VII of the Georgia Constitution provides that no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution;

(3) Article III, Section VI, Paragraph II(a)(3) of the Georgia Constitution provides that the General Assembly may provide by law for participation by the state and political subdivisions and instrumentalities of the state in federal programs and the compliance with laws relating thereto;

(4) Article III, Section IX, Paragraph II(c) of the Georgia Constitution provides that the General Assembly shall by general law provide for the regulation and management of the finance and fiscal administration of the state; and

(5) The provisions of this Code section are authorized under a reasonable construction of such provisions of federal law and the Georgia Constitution.

(b) To the extent authorized and contemplated by federal law, the State of Georgia and its departments, agencies, instrumentalities, and political subdivisions may, in the course of participation in federal programs, administer programs and provide assistance in the manner contemplated by 42 U.S.C.A. Section 604a, and any other similar federal law, subject to the following conditions:

(1) State and local government funds may be expended for administrative purposes incidental to the administration of such programs but neither state funds nor local government funds shall be distributed to any church, sect, cult, religious denomination, or sectarian institution, except as otherwise authorized by law or the Constitution of the State of Georgia;

(2) If an individual objects to the religious character of an organization from which the individual receives, or would receive, program assistance or services, an alternative acceptable provider shall be made available to such individual;

(3) A religious organization providing program assistance or services shall not discriminate against an individual in rendering program assistance or services on the basis of religion, religious belief, or participation in or refusal to participate in a religious practice or rite;

(4) No funds provided to a religious organization to provide program assistance or services shall be expended for sectarian worship, instruction, proselytization, or promotion of any particular system of faith or worship; and

(5) Organizations receiving funds to provide program assistance or services shall either be organized under Section 501(c)(3) of the United States Internal Revenue Code or shall agree to be subject to audit of the use of state and local funds pursuant to appropriate rules and regulations promulgated by the Department of Audits and Accounts for the administration of the terms of this Code section. (Code 1981, § 50-1-7, enacted by Ga. L. 2002, p. 1147, § 1.)

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 335 (2002).

50-1-8. Election to contractually provide to unmarried persons benefits, rights, or privileges provided to married persons.

(a) It is the policy of this state that any organization or person in this state may elect to, or elect not to, contractually provide to unmarried persons one or more benefits, rights, or privileges in the same manner

that such organization or person contractually provides benefits, rights, or privileges to married persons.

(b) State and local government shall not impose any penalty on or withhold any benefits, rights, or privileges from any organization or person on the basis of such organization's or person's election to or election not to contractually or otherwise provide to unmarried persons one or more benefits, rights, or privileges in the same manner that such organization or person contractually or otherwise provides benefits, rights, or privileges to married persons.

(c) Subsection (b) of this Code section shall apply to the state and any political subdivision of the state and to any department, agency, authority, commission, or other entity of the state or any political subdivision of the state.

(d) As used in this Code section, the term "organization" includes but is not limited to any corporation, association, nonprofit organization, limited liability company, partnership, group, authority, or other entity, including any political subdivision of this state. (Code 1981, § 50-1-8, enacted by Ga. L. 2005, p. 452, § 1/HB 67.)

Law reviews. — For article on 2005 enactment of this Code section, see 22 Ga. St. U.L. Rev. 205 (2005).

50-1-9. Natural disaster defined; replacement of licenses, state identification cards, and other documents.

(a) As used in this Code section, the term "natural disaster" shall mean a flood, tornado, hurricane, earthquake, or other occurrence for which the President of the United States has made a federal disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121-5206.

(b) Each state agency that issues permits, licenses, certificates, or identification cards to citizens of this state including, but not limited to, drivers' licenses, state identification cards, professional licenses, professional certifications, professional registrations, professional permits, and birth certificates, shall issue replacement permits, licenses, certificates, or identification cards without charge to citizens who apply for such replacement permits, licenses, certificates, or identification cards and who demonstrate that their original permits, licenses, certificates, or identification cards were lost or destroyed as the direct result of a natural disaster if such application is made within 60 days following a federal disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121-5206, and if

such citizen is a resident of the area included within such federal disaster declaration. (Code 1981, § 50-1-9, enacted by Ga. L. 2010, p. 336, § 1/HB 1019.)

CHAPTER 2

BOUNDARIES AND JURISDICTION OF THE STATE

Article 1		Sec.	
State Boundaries			
Sec.			tion to United States over certain lands within state; application to Governor; procedure for effecting cession.
50-2-1.	Boundaries of the state generally.		
50-2-2.	Boundary between Georgia and South Carolina.	50-2-23.2.	Concurrent jurisdiction over lands of the National Infantry Museum; limits to concurrent jurisdiction; cession of concurrent jurisdiction; state laws and regulations not preempted.
50-2-3.	Boundary between Georgia and North Carolina and Tennessee.		
50-2-4.	Boundary between Georgia and Alabama.	50-2-24.	Vesting of jurisdiction; exemption from state, county, or municipal charges.
50-2-5.	Boundary between Georgia and Florida.	50-2-25.	State consent to acquisition by United States of lands for forest and wildlife purposes; concurrent jurisdiction.
Article 2			
Jurisdiction			
50-2-20.	Extent of sovereignty and jurisdiction generally.	50-2-26.	Reacquisition of jurisdiction over state maintained highways in ceded territory.
50-2-21.	Jurisdiction extends to all persons within state limits; court's option to decline jurisdiction.	50-2-27.	Retrocession of jurisdiction over lands owned by the United States.
50-2-22.	State consent to acquisition by United States of lands for government purposes.	50-2-28.	Capitol Square designated; state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds for traffic movement.
50-2-23.	Exclusive jurisdiction ceded over lands acquired by United States; exceptions.		
50-2-23.1.	Cession of concurrent jurisdic-		

Cross references. — Boundaries of which constitutes state boundary, Georgia counties bordering on stream § 36-1-2.

ARTICLE 1

STATE BOUNDARIES

Cross references. — Conducting of surveys for determination of land boundaries generally, T. 44, C. 4.

50-2-1. Boundaries of the state generally.

The boundaries of Georgia, as deduced from the Constitution of Georgia, the Convention of Beaufort, the Articles of Cession and

Agreement with the United States of America entered into on April 24, 1802, the Resolution of the General Assembly dated December 8, 1826, and the adjudications and compromises affecting Alabama, Florida, and South Carolina are as follows:

From the sea, at the point where the northern edge of the navigable channel of the River Savannah intersects a point three geographical miles east of the ordinary low water mark, generally along the northern edge of the navigable channel up the River Savannah, along the northern edge of the sediment basin to the Tidegate, thence along the stream thereof to the fork or confluence made by the Rivers Keowee and Tugalo, and thence along said River Tugalo until the fork or confluence made by said Tugalo and the River Chattooga, and up and along the same to the point where it touches the northern boundary line of South Carolina, and the southern boundary line of North Carolina, which is at a point on the thirty-fifth parallel of north latitude, reserving all the islands in said Rivers Savannah, Tugalo, and Chattooga, except for the Barnwell Islands and Oyster Bed Island in the Savannah, to Georgia; thence on said line west, to a point where it merges into and becomes the northern boundary line of Alabama — it being the point fixed by the survey of the State of Georgia, and known as Nickajack; thence in a direct line to the great bend of the Chattahoochee River, called Miller's Bend — it being the line run and marked by said survey; and thence along and down the western bank of said Chattahoochee River, along the line or limit of high-water mark, to its junction with the Flint River; thence along a certain line of survey made by Gustavus J. Orr, a surveyor on the part of Georgia, and W. Whitner, a surveyor on the part of Florida, beginning at a fore-and-aft tree about four chains below the junction; thence along this line east, to a point designated 37 links north of Ellicott's Mound on the St. Marys River; thence along the middle of said river to the Atlantic Ocean, and extending therein three geographical miles from ordinary low water along those portions of the coast and coastal islands in direct contact with the open sea or three geographical miles from the line marking the seaward limit of inland waters; thence running in a northerly direction and following the direction of the Atlantic Coast to the point where the northern edge of the navigable channel of the River Savannah intersects a point three geographical miles east of the ordinary low water mark, the place of beginning; including all the lands, waters, islands, and jurisdictional rights within said limits; and also all the islands within three geographical miles of the seacoast. (Laws 1788, Cobb's 1851 Digest, p. 150; Code 1863, § 17; Code 1868, § 15; Code 1873, § 15; Code 1882, § 15; Civil Code 1895, § 16; Civil Code 1910, § 16; Ga. L. 1916, p. 29, § 1; Code 1933, § 15-101; Ga. L. 1969, p. 678, § 1; Ga. L. 1994, p. 824, § 1.)

JUDICIAL DECISIONS

Grants made previous to settlement of boundary dispute between two states are void if those grants conflict with such settlement. *Coffee v. Groover*, 123 U.S. 1, 8 S. Ct. 1, 31 L. Ed. 51 (1887).

General rule where river is boundary. — General rule is that where a river is the boundary between two states, if the original property is in neither, and there is no convention respecting it, each state holds to the middle of the stream. *Georgia Ry. & Power v. Wright*, 146 Ga. 29, 90 S.E. 465 (1916).

Jurisdiction of state extends over river. — That part of the Savannah River which is broken by islands, located between an island and the Georgia mainland, is within the jurisdiction and sovereignty of this state by virtue of this section, and a dam constructed across the river from an island to the Georgia shore is subject to taxation in this state. *Georgia Ry. & Power v. Wright*, 146 Ga. 29, 90 S.E. 465 (1916).

Coastal boundaries. — Salt waters of this state extend from the mean low watermark of the foreshore three geographical miles offshore; except where a low tide elevation is situated within three nautical miles seaward of the low water line along the coast, the state's three mile boundary is measured from such low tide elevation. *Department of Natural Resources v. Joyner*, 241 Ga. 390, 245 S.E.2d 644 (1978).

Requirements for baselines. — Baselines shall not be drawn to and from low tide elevations unless lighthouses or similar permanently visible installations above sea level are built upon them. *Department of Natural Resources v. Joyner*, 143 Ga. App. 868, 240 S.E.2d 114 (1977), rev'd on other grounds, 241 Ga. 390, 245 S.E.2d 644 (1978).

Normal baseline for measuring territorial sea is low water line. *Department of Natural Resources v. Joyner*, 143 Ga. App. 868, 240 S.E.2d 114 (1977), rev'd

on other grounds, 241 Ga. 390, 245 S.E.2d 644 (1978).

State should be named in petition and served notice. — Whichever line is correct, low tide or high tide, as the dividing line between private property sought to be registered and the state's property, the state is still an adjoining landowner and should have been so named in the petition and served other than by the advertisement "to whom it may concern," and a land registration judgment, if granted, would not be binding upon an adjoining landowner who was not named and served. *State v. Bruce*, 231 Ga. 783, 204 S.E.2d 106 (1974).

South Carolina sovereignty over Barnwell Islands. — Islands that emerged in the Savannah River after the 1787 Treaty of Beaufort do not affect the boundary line between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

South Carolina established sovereignty over the Barnwell Islands in the Savannah River by prescription and acquiescence, since there was a record of almost-uniform taxation of property on the islands by South Carolina authorities, policing and prosecutorial activities by South Carolina authorities, and patrolling by South Carolina wildlife officers. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Lateral seaward boundary between Georgia and South Carolina. — Tybee Island is to be regarded as the "headland" for the south side of the mouth of the Savannah River, and the long-existing shoal forms the north side of the mouth in determining the lateral seaward boundary between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Cited in *United States v. Louisiana*, 363 U.S. 1, 80 S. Ct. 961, 4 L. Ed. 2d 1025 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Phrase added to clarify treatment of coastal islands. — Addition of the

phrase "and coastal islands," in this section does not render the Georgia law in-

consistent with the Submerged Lands Act, but appears to be simply an attempt to clarify one question left unanswered by the Submerged Lands Act, but answered by the Supreme Court in *United States v. California*, 381 U.S. 139, 85 S. Ct. 1401, 14 L. Ed. 2d 296 (1965), that is, how are coastal islands to be treated in determining the seaward boundary. 1976 Op. Att'y Gen. No. 76-95 (see O.C.G.A 50-2-1).

Determining boundary of state's tidal or salt waters. — Seaward boundary of Georgia's tidal or salt waters should be determined using the rules set forth in the Convention on the Territorial Sea and Contiguous Zone. 1976 Op. Att'y Gen. No. 76-95.

Boundary between Georgia and Alabama along Chattahoochee River is west bank of that river. 1962 Op. Att'y Gen. p. 26.

Boundaries of state's property vary with considerations of state's position. — If the state is classed with all of the other owners of tidewater land, the boundaries of the state's property clearly extend to the low-water mark or encompass generally the entire tidewater bed; on the other hand, when the state's unique position as local political sovereign is taken into consideration, the state's rights of ownership extend far beyond this point for an additional three miles out to sea. 1965-66 Op. Att'y Gen. No. 66-49.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 26 et seq.

C.J.S. — 81A C.J.S., States, §§ 12, 16 et seq.

50-2-2. Boundary between Georgia and South Carolina.

The boundary between Georgia and South Carolina shall be the line described as running from the mouth of the River Savannah, up said river and the Rivers Tugalo and Chattooga, to the point where the last-named river intersects with the thirty-fifth parallel of north latitude, conforming as much as possible to the line agreed on by the commissioners of said states at Beaufort on April 28, 1787, except for the Barnwell Islands and the Oyster Bed Island in the River Savannah; provided, however, that the boundary along the lower reaches of the Savannah River, and the lateral seaward boundary, shall be more particularly described as being:

BEGINNING at a point 32 degrees 07 minutes 00 seconds North Latitude and 81 degrees 07 minutes 00 seconds West Longitude, located in the Savannah River, and proceeding in a southeasterly direction down the thread of the Savannah River equidistant between the banks of the River on Hutchinson Island and on the mainland of South Carolina, including the small downstream island southeast of the aforesaid point, at ordinary stage, until reaching the vicinity of Pennyworth Island;

Proceeding thence easterly down the thread of the northernmost channel of the Savannah River as it flows north of Pennyworth Island, making the transition to the said northernmost channel using the triequidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank,

thence to the thread of the said northernmost channel equidistant from the South Carolina mainland bank and Pennyworth Island at ordinary stage, around Pennyworth Island;

Proceeding thence southeasterly to the thread of the northern channel of the Savannah River equidistant from the Georgia bank on Hutchinson Island and the South Carolina mainland bank, making the transition utilizing the triequidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank;

Proceeding thence southeasterly down the thread of the Savannah River equidistant from the Hutchinson Island and South Carolina mainland banks of the river at ordinary stage, through the tide gates, until intersecting the northwestern (farthest upstream) boundary of the "Back River Sediment Basin," as defined in the "Annual Survey — 1992, Savannah Harbor, Georgia, U.S. Coastal Highway, No. 17 to the Sea," U.S. Army Corps of Engineers, Savannah District, as amended by the Examination Survey — 1992 charts for the Savannah Harbor Deepening Project, Drawings No. DSH 112/107, (hereinafter the "Channel Chart");

Proceeding thence along the said northwestern boundary to its intersection with the northern boundary of the Back River Sediment Basin, in a generally southeasterly direction until said boundary intersects the northern boundary of the main navigational channel as depicted on the Channel Chart at the point designated as SR-34 (Georgia State Grid, East Zone, 1927 NAD, coordinates $x=849479.546$, $y=759601.757$);

Proceeding thence toward the mouth of the Savannah River along the northern boundary of the main navigational channel at the new channel limit as depicted on the Channel Chart, via Oglethorpe Range through point SR-33 (coordinates $x=853126.849$, $y=761229.575$), Fort Jackson Range through point SR-32 (coordinates $x=854568.183$, $y=762555.255$), the Bight Channel through points SR-31 (coordinates $x=855854.367$, $y=765145.946$), SR-30 (coordinates $x=857363.583$, $y=766237.604$), SR-29 (coordinates $x=858471.561$, $y=766530.527$), SR-28 (coordinates $x=859881.928$, $y=766491.887$), and SR-27 (coordinates $x=861359.826$, $y=765804.794$), Upper Flats Range through point SR-26 (coordinates $x=863655.959$, $y=763821.629$), Lower Flats Range through points SR-25 (coordinates $x=865361.347$, $y=759910.744$), SR-24 (coordinates $x=866413.099$, $y=758260.171$), SR-23 (coordinates $x=867339.230$, $y=757647.194$), SR-22 (coordinates $x=870024.011$, $y=756511.390$), and SR-21 (coordinates $x=873855.646$, $y=755906.677$), Crossing Range through points SR-20 (coordinates $x=875581.821$, $y=754992.833$), and SR-19 (coordinates $x=884667.253$,

y=744780.789) and New Channel Range around the Rehandling Basin, and along the northern boundary of the Oyster Bed Island Turning Basin through point SR-16 (coordinates x=894907.977, y=742529.752), to the easternmost end of Oyster Bed Island at Navigational Buoy R "24";

Proceeding thence from Navigational Buoy R "24" easterly along the mean low water line of Oyster Bed Island to the point at which the mean low water line of Oyster Bed Island intersects the Oyster Bed Island Training Wall;

Proceeding thence along the southern edge of the Oyster Bed Island Training Wall until reaching the Jones Island Range line;

Proceeding thence southeasterly along the Jones Island Range line until reaching the northern boundary of the main navigational channel as depicted on the Channel Chart;

Proceeding thence southeasterly along the northern boundary of the main navigational channel as depicted on the Channel Chart to Navigational Buoy R "6," via Jones Island Range and Bloody Point Range; and finally

Proceeding thence in an easterly direction from Navigational Buoy R "6" in a straight line forming the seaward lateral boundary line to the seaward limit of Georgia as now or hereafter fixed by the Congress of the United States, said boundary line bearing approximately 104 degrees from magnetic north, the bearing of said line being more particularly described as being at right angles to the baseline from the southernmost point of Hilton Head Island and the northernmost point of Tybee Island, drawn by the Baseline Committee in 1970.

Provided, however, that the boundary shall be as more particularly shown by reference to the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) GPS coordinates on a map to be prepared by NOAA as a part of the survey commissioned by the States of Georgia and South Carolina in order to locate this boundary. In case of any conflict between the verbal description set forth hereinabove and the map locating the boundary with reference to GPS points, the location shown on the map shall prevail.

Provided, further, that nothing herein shall in any way be deemed to govern or affect in any way the division between the states of the remaining assimilative capacity, that is, the capacity to receive wastewater and other discharges without violating water quality standards, of the portion of the Savannah River described herein. (Orig. Code 1863, § 18; Code 1868, § 16; Code 1873, § 16; Code 1882, § 16; Civil Code

1895, § 17; Civil Code 1910, § 17; Code 1933, § 15-102; Ga. L. 1994, p. 824, § 2.)

JUDICIAL DECISIONS

Boundary line remains where originally established. — Boundary line between Georgia and South Carolina was not altered by the fact that the United States government, in the course of its work to improve the navigation of the Savannah River, changed the location of the main current or channel of the river; but the boundary remains where the main channel or current flowed naturally when the boundary line was originally fixed and established. *James v. State*, 10 Ga. App. 13, 72 S.E. 600 (1911).

Person determined within Georgia boundary. — Person in a boat on the Savannah River, within 30 yards of the Georgia side, at a point where the river is at least 175 yards wide, is *prima facie* in Georgia. *Simpson v. State*, 92 Ga. 41, 17 S.E. 984, 44 Am. St. R. 75, 22 L.R.A. 248 (1893).

South Carolina sovereignty over Barnwell Islands. — Islands that emerged in the Savannah River after the 1787 Treaty of Beaufort do not affect the

boundary line between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

South Carolina established sovereignty over the Barnwell Islands in the Savannah River by prescription and acquiescence since there was a record of almost uniform taxation of property on the islands by South Carolina authorities, policing and prosecutorial activities by South Carolina authorities, and patrolling by South Carolina wildlife officers. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Lateral seaward boundary between Georgia and South Carolina. — Tybee Island is to be regarded as the “headland” for the south side of the mouth of the Savannah River, and the long-existing shoal forms the north side of the mouth, in determining the lateral seaward boundary between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Boundary between Georgia and South Carolina is midway between the banks of the northern branch of the Sa-

vannah River. 1954-56 Op. Att’y Gen. p. 625.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 26 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

50-2-3. Boundary between Georgia and North Carolina and Tennessee.

The boundary between Georgia and North Carolina and Georgia and Tennessee shall be the line described as the thirty-fifth parallel of north latitude, from the point of its intersection by the River Chattooga, west to the place called Nickajack. (Orig. Code 1863, § 19; Code 1868, § 17; Code 1873, § 17; Code 1882, § 17; Civil Code 1895, § 18; Civil Code 1910, § 18; Code 1933, § 15-103.)

Editor's notes. — By resolution (Ga. L. 2008, p. 1180), the General Assembly stated its clear and express intent to correct, establish, survey, and proclaim the northern border of the State of Georgia and the southern border of the States of

Tennessee and North Carolina at the true 35th parallel.

Law reviews. — For article discussing the disputes over Georgia's northern boundary with North Carolina and Tennessee, see 8 Ga. St. B.J. 197 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 26 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

50-2-4. Boundary between Georgia and Alabama.

The boundary line between Georgia and Alabama shall be the line described from Nickajack to Miller's Bend on the Chattahoochee River, and down said river to its junction with the Flint River. (Orig. Code 1863, § 20; Code 1868, § 18; Code 1873, § 18; Code 1882, § 18; Civil Code 1895, § 19; Civil Code 1910, § 19; Code 1933, § 15-104.)

OPINIONS OF THE ATTORNEY GENERAL

Boundary between Georgia and Alabama along the Chattahoochee River is

the west bank of that river. 1962 Op. Att'y Gen. p. 26.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 26 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

50-2-5. Boundary between Georgia and Florida.

The boundary line between Georgia and Florida shall be the line described from the junction of the Flint and Chattahoochee Rivers to the point 37 links north of Ellicott's Mound, on the St. Marys River; thence down said river to the Atlantic Ocean; thence along the middle of the presently existing St. Marys entrance navigational channel to the point of intersection with a hypothetical line connecting the seawardmost points of the jetties now protecting such channel; thence along said line to a control point of latitude 30° 42' 45.6" north, longitude 81° 24' 15.9" west; thence due east to the seaward limit of Georgia as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90° bearing so far as a need for further delimitation may arise. (Ga. L. 1859, p. 23, § 1; Code 1863, § 21; Code 1868, § 19; Code 1873, § 19; Code 1882, § 19; Civil Code 1895, § 20; Civil Code 1910, § 20; Code 1933, § 15-105; Ga. L. 1969, p. 675, § 1.)

JUDICIAL DECISIONS

Cited in *Coffee v. Groover*, 123 U.S. 1, 8 S. Ct. 1, 31 L. Ed. 51 (1887).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 26 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

ARTICLE 2

JURISDICTION

50-2-20. Extent of sovereignty and jurisdiction generally.

The sovereignty and jurisdiction of this state extend to all places within the limits of her boundaries except so far as she has voluntarily ceded her sovereignty and jurisdiction over particular localities to the United States or adjacent states. (Orig. Code 1863, § 22; Code 1868, § 20; Code 1873, § 20; Code 1882, § 20; Civil Code 1895, § 21; Civil Code 1910, § 21; Code 1933, § 15-201.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 50-2-2 contemplates cession of jurisdiction by legislature and not Governor. — This section does not contemplate the cession of jurisdiction to the United States by the Governor but instead contemplates that such cession shall be granted exclusively by the General Assembly. 1950-51 Op. Att'y Gen. p. 75.

Policing power. — Although a reciprocal agreement is entered into, power of policing within the boundaries of Georgia cannot be delegated to another state nor can the policing power of this state be extended outside the territory of Georgia. 1957 Op. Att'y Gen. p. 147.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 3, 4, 19 et seq., 35.

C.J.S. — 81A C.J.S., States, § 33 et seq.

50-2-21. Jurisdiction extends to all persons within state limits; court's option to decline jurisdiction.

(a) The jurisdiction of this state and its laws extend to all persons while within its limits, whether as citizens, denizens, or temporary sojourners.

(b) A court of this state may decline to exercise jurisdiction of any civil cause of action of a nonresident accruing outside this state if there

is another forum with jurisdiction of the parties in which the trial can be more appropriately held. In determining the appropriateness of this state or of another forum, the court shall take into account the following factors:

- (1) The place of accrual of the cause of action;
- (2) The location of witnesses;
- (3) The residence or residences of the parties;
- (4) Whether a litigant is attempting to circumvent the applicable statute of limitations of another state; and
- (5) The public factor of the convenience to and burden upon the court.

(c) Upon a motion filed not later than 90 days after the last day allowed for the filing of the moving party's answer and upon the party's showing that the existing forum constitutes an inconvenient forum based on the factors listed in subsection (b) of this Code section and where there is another forum which can assume jurisdiction, the court may dismiss the action without prejudice to its being filed in any appropriate jurisdiction on any condition or conditions that may be just. (Orig. Code 1863, § 23; Code 1868, § 21; Code 1873, § 21; Code 1882, § 21; Civil Code 1895, § 22; Civil Code 1910, § 22; Code 1933, § 15-202; Ga. L. 2003, p. 820, § 5.)

Cross references. — Rights of citizens of other states and aliens while in state, § 1-2-9 et seq. Grounds for exercising personal jurisdiction over nonresidents, § 9-10-91.

Editor's notes. — Ga. L. 2003, p. 820, § 9, not codified by the General Assembly, provides that this Act "shall apply to all civil actions filed on or after July 1, 2003."

Law reviews. — For article surveying developments in Georgia trial practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 275 (1981). For article, "Georgia's Domestic

Relations Long-Arm Statute, Circa 1986," see 23 St B.J. 74 (1987). For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986). For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 28 (2003).

For comment on *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), see 26 Mercer L. Rev. 317 (1974).

JUDICIAL DECISIONS

Lack of jurisdiction. — Court has no jurisdiction over a case in which neither of the parties is, or has ever been in the state, or a citizen, or a resident of the state, or the owner of property in the state. *House v. House*, 25 Ga. 473 (1858).

Extent of jurisdiction. — All persons found within the limits of a government

are to be deemed citizens thereof, so that the right of jurisdiction, civil and criminal, will attach to such persons. *Dearing v. Bank of Charleston*, 5 Ga. 497, 48 Am. Dec. 300 (1848); *Adams v. Lamar*, 8 Ga. 83 (1850); *Molyneux v. Seymour, Fanning & Co.*, 30 Ga. 440, 76 Am. Dec. 662 (1860).

Jurisdiction is to be so exercised as to

conclude by judgment none but those who are parties. *Dearing v. Bank of Charleston*, 5 Ga. 497, 48 Am. Dec. 300 (1848); *Adams v. Lamar*, 8 Ga. 83 (1850).

Jurisdiction extends only where it is not surrendered or restrained by the Constitution of the United States. *Johnston v. Riley*, 13 Ga. 97 (1853).

Jurisdiction of nonresidents. — Any court of any county of this state which can serve process on a nonresident, traveling through the state, acquires jurisdiction of that nonresident. *Campbell v. Campbell*, 67 Ga. 423 (1881).

Even though the allegations showed that the defendant was a resident of a foreign jurisdiction, yet when the defendant was personally served with process while sojourning within the state and the county in which the court was located, where the petitioner resided, the court acquired jurisdiction under former Code 1933, §§ 3-206 and 15-202 (see O.C.G.A. §§ 9-10-33 and 50-2-21). *Miller v. Miller*, 216 Ga. 535, 118 S.E.2d 85 (1961).

Persons passing through state. — Citizen of another state, passing through this state, may be sued in any county of this state in which the citizen may happen to be at the time when sued. *Murphy v. John S. Winter & Co.*, 18 Ga. 690 (1855).

Person not a citizen, and temporarily sojourning in this state, may be sued in any county thereof in which the person may be found at the time the person is sued, for the jurisdiction of this state extends to "citizens, denizens, or temporary sojourners." *Cheeley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Service on nonresident held proper. — Service of a petition for modification of child support upon a nonresident while the nonresident was visiting children in Georgia was proper. *Hutto v. Plagens*, 254 Ga. 512, 330 S.E.2d 341 (1985).

Foreign executors within limits of state. — Foreign executors or administrators coming within jurisdictional limits of the state are liable to be sued here by creditors, or to be brought to an account by legatees or distributees. *Johnson v. Jackson*, 56 Ga. 326, 21 Am. R. 285 (1876).

Concurrent jurisdiction of state and federal courts. — When the courts

of this state and the courts of the United States have concurrent jurisdiction over the subject matters and parties to a controversy, that tribunal which first actually takes the jurisdiction will retain jurisdiction. *Hines & Hobbs v. Rawson*, 40 Ga. 356, 2 Am. R. 581 (1869).

Jurisdiction of a state does not extend beyond the state's territorial limits; consequently, no personal judgment can be obtained against a nonresident unless the nonresident is served, so as to give the court jurisdiction, and that legal service cannot be perfected by forcing a nonresident defendant to come within the jurisdiction of the state in order to perfect personal service and thereby obtain jurisdiction. *Lomax v. Lomax*, 176 Ga. 605, 168 S.E. 863 (1933).

Presence of corporation makes it subject to jurisdiction. — Corporation is for some purposes a citizen, and, if present, is no less subject to the jurisdiction than any other citizen of another state. Besides, a corporation, though a citizen of but one state, may be a resident also of other states. *Louisville & N.R.R. v. Meredith*, 66 Ga. App. 488, 18 S.E.2d 51 (1941), *aff'd*, 194 Ga. 106, 21 S.E.2d 101 (1942).

Service on agent of defendant corporation. — Legal service may be perfected on a defendant railroad corporation which does business in this state, (i.e., has tracks in the state) by serving the corporation's soliciting freight agent who has an office in the county in which the suit is filed and service perfected, although the defendant does no business in the county other than that of the soliciting of freight. *Louisville & N.R.R. v. Meredith*, 66 Ga. App. 488, 18 S.E.2d 51 (1941), *aff'd*, 194 Ga. 106, 21 S.E.2d 101 (1942).

Jurisdiction of person or property. — If the court gets jurisdiction of the person or property of a nonresident, the court will retain jurisdiction to administer justice to the court's own citizens. *Callaway v. Jones & Quattlebum*, 19 Ga. 277 (1856).

Full justice afforded to nonresidents. — Nonresident invoking aid of court will be afforded as full justice as is consistent with the laws and policy of the state. *Reeves v. Southern Ry.*, 121 Ga. 561,

49 S.E. 674, 70 L.R.A. 513, 2 Ann. Cas. 207 (1905); Seaboard Air-Line Ry. v. Burns, 17 Ga. App. 1, 86 S.E. 270 (1915).

Jurisdiction over property of non-resident. — Courts have jurisdiction of a nonresident who owns property in a state, although the nonresident does not come within territorial limits. *Molyneux v. Seymour, Fanning & Co.*, 30 Ga. 440, 76 Am. Dec. 662 (1860).

Seizure of nonresident defendant's property. — Extent of available judicial relief in reference to alimony against a nonresident defendant, who is not personally served in this state, or does not acknowledge service, or who does not voluntarily submit to the jurisdiction of the court by appearing and pleading, is confined to the seizure and utilization of such property as the defendant may own, situated within the jurisdiction of the court. *Hicks v. Hicks*, 193 Ga. 446, 18 S.E.2d 754 (1942).

Jurisdiction properly denied. — Trial court properly dismissed a libel and slander action against a bank, an investment fund, and a supervisor as the supervisor gave the reference underlying the suit from a New York hotel room to an individual in the Netherlands, the law of the Netherlands controlled the case, most witnesses resided in the Netherlands, including the employee, and the supervisor had returned to the Netherlands at the time of the appeal; judicial notice was also taken of the deaths of the trial judge and the court reporter who had handled the case below, which, alone, satisfied O.C.G.A. § 50-2-21(b)(5). *Triguero v. ABN AMRO Bank N.V.*, 273 Ga. App. 92, 614 S.E.2d 209 (2005).

Exemption from service of civil process. — When there is pending in Florida a suit of A against B, and by stipulation of counsel for both parties, B comes into this state solely for the purpose of taking depositions, B is exempt from service of civil process while taking such depositions and during a reasonable time going and coming, even though the attorney for B testified that the purpose of taking the depositions was to make opposing counsel believe that B would not be present at the trial of the suit in Florida and there was no intention to use the

depositions. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

If a person is present in a county other than that of the person's residence, for the sole purpose of attending the taking of depositions therein in a case to which the person is a party, and advantage is taken of the person's presence to serve process on the person in another action, to compel the person to defend the action in a jurisdiction other than that of residence, the service of such process should be quashed. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Nonresident witness or party exempt from service. — Nonresident witness or suitor in attendance upon the trial of any case in court is exempt from service of any writ or summons while so attending, and in going to, or returning from the court. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption from service extends to attendance at other tribunals. — Privilege of exemption from service is not only assured while a nonresident is attending upon strictly judicial proceedings, but upon any tribunal whose business has reference to or is intended to affect judicial proceedings. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Rule of nonresident immunity from service embraces wide scope of tribunals. — Hearings before arbitrators, legislative committees, registers and commissioners in bankruptcy, and examiners and commissions to take depositions, are all embraced within the scope of application of the rule of nonresident immunity from service. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Rule of nonresident immunity extends to every person who in good faith attends as a witness in any proceeding where testimony is to be taken according to the practice of the courts to be used in establishing the rights of a party in any judicial proceeding. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption where controlling purpose for entering state for depositions. — In order for a nonresident to be immune from process under the rule of exemption, the nonresident's main and controlling purpose in coming into this

state must be for the purpose of taking the depositions; this is the meaning of the term "good faith" when used in connection with this rule of exemption. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption from service must be claimed. — Service on garnishee temporarily sojourning here as suitor in court was voidable, yet when there was no objection made to the service and no answer filed at either return or second term, default judgment was valid. *Thornton v. American Writing Mach. Co.*, 83 Ga. 288, 9 S.E. 679, 20 Am. St. R. 320 (1889).

Question of jurisdiction not waived by appearance. — In case of a judgment void for want of personal service of process, the defendant does not waive the question of jurisdiction or validate the void judgment by an appearance after judgment in support of a motion to set the judgment aside. *Hicks v. Hicks*, 193 Ga. 446, 18 S.E.2d 754 (1942).

Voluntary attendance to answer for misdemeanor is not privileged. — Nonresident of the state, voluntarily attending a city court to answer to an accusation for a misdemeanor against the nonresident is not privileged from arrest under civil process nor exempt from service of civil process. *Rogers v. Rogers*, 138 Ga. 803, 76 S.E. 48 (1912).

Defendant in criminal case can be witness in own behalf. — Each of the cases in which service of civil process upon

a nonresident criminal defendant was upheld rested upon a rationale that under the law of this state then existing a defendant in a criminal case could not be a "witness" within the meaning of former Code 1933, § 38-1506 (see now O.C.G.A. § 24-13-1) because a witness could not take the stand and be sworn on own behalf. These cases were no longer applicable in view of the enactment of former Code 1933, §§ 26-401, 27-405, 38-415 and 38-416 (see now O.C.G.A. §§ 16-1-3(1) 17-7-28, and 24-5-506), which authorized a defendant to testify in a criminal case in this state. *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), commented on in 26 Mercer L. Rev. 317.

Immunity of nonresident defendant who appears voluntarily. — Immunity should be extended to the nonresident criminal defendant who voluntarily appears in court to answer a criminal charge in Georgia. *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), commented on in 26 Mercer L. Rev. 317.

Cited in *Shea v. Gehan*, 70 Ga. App. 229, 28 S.E.2d 181 (1943); *Curtis v. Curtis*, 215 Ga. 367, 110 S.E.2d 668 (1959); *Ward v. Ward*, 223 Ga. 868, 159 S.E.2d 81 (1968); *Edwards v. Edwards*, 227 Ga. 307, 180 S.E.2d 358 (1971); *Padgett v. Penland*, 230 Ga. 824, 199 S.E.2d 210 (1973); *Chalfant v. Rains*, 244 Ga. 747, 262 S.E.2d 63 (1979); *Williams v. Fuller*, 244 Ga. 846, 262 S.E.2d 135 (1979); *Gant v. Gant*, 254 Ga. 239, 327 S.E.2d 723 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 3, 4.

C.J.S. — 81A C.J.S., States, §§ 34, 35.

ALR. — Discretion of court to refuse to entertain action for nonstatutory tort oc-

curing in another state or country, 32 ALR 6; 48 ALR2d 800.

Immunity of nonresident defendant in criminal case from service of process, 20 ALR2d 163.

50-2-22. State consent to acquisition by United States of lands for government purposes.

The consent of the state is given, in accordance with Article I, Section 8, Clause 17 of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any lands in this state which have been or may be acquired for sites for customs houses, courthouses, post offices, or for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. (Ga. L.

1906, p. 126, §§ 1, 2; Civil Code 1910, § 25; Ga. L. 1927, p. 352, § 1; Code 1933, § 15-301.)

JUDICIAL DECISIONS

Statutes attempting to waive state's right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22 through 50-2-24) attempted to waive the state's sovereign right to tax, the statutes were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action and it was not error for the court to dismiss the petition on demurrer (now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Cession of complete and general jurisdiction over United States' lands.

— The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an act of repeal or amendment of prior Acts. It is a new and general statute by which this state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for "purposes of government." Former Code 1933, § 15-301 (see O.C.G.A. § 50-2-22) was in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVIII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Counties have right to tax private property located upon federal lands.

— Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I) and were, to the extent that the statutes undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition sought to defeat the county's attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state's right to tax, the petition alleged no cause of action, and the court did not err in sustaining the demurrers (now motion to

dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in *pari materia* with Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with the business of the United States. Taxing the private property could not conceivably interfere with the government's business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Lands acquired by United States are free from certain state interference. — When lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to the qualification that if upon them forts, arsenals, or other public buildings are erected for the use of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. *Brittain v. Reid*, 220 Ga. 794, 141 S.E.2d 903 (1965).

State possesses jurisdiction over robbery in post office. — When a robbery occurred in a United States post office, the defendant's contention that the federal government had exclusive jurisdiction over the offense since the robbery occurred on federal property was without merit. *Harris v. State*, 186 Ga. App. 756, 368 S.E.2d 527 (1988).

Cited in *Dicks v. Dicks*, 177 Ga. 379, 170 S.E. 245 (1933); *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967); *Powers v. State*, 261 Ga. App. 296, 582 S.E.2d 237 (2003).

OPINIONS OF THE ATTORNEY GENERAL

No jurisdiction over national military park. — Game and Fish Commission (now Department of Natural Resources) of this state does not have jurisdiction over the premises of the Chickamauga-Chattanooga National Military Park for the purpose of checking fishing licenses and other violations of fishing and hunting laws which might occur on the premises of the park. 1945-47 Op. Att'y Gen. p. 51.

Exclusive criminal jurisdiction. — Although in earlier Acts consenting to acquisition and ceding jurisdiction over land for the park, criminal jurisdiction was specifically reserved by the State of Georgia, exclusive jurisdiction was ceded by this section. 1945-47 Op. Att'y Gen. p. 51.

Building safety council has no right or duty to inspect: (a) properties of the federal government such as military reservations; or (b) properties, such as military housing projects, owned by the government but leased to private persons for nongovernmental uses. 1948-49 Op. Att'y Gen. p. 394.

Juvenile court does not have jurisdiction on military base. — Fort Stewart remains in the exclusive jurisdiction of the federal government and the Juvenile Court of Liberty County does not have jurisdiction over juveniles who have allegedly committed delinquent acts on the military base. 1994 Op. Att'y Gen. No. U94-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, United States, § 33 et seq.

C.J.S. — 91 C.J.S., United States, § 123 et seq.

ALR. — Applicability of state statutes or municipal regulations to contracts for performance of work on land owned or

leased by the federal government, 91 ALR 779; 115 ALR 371; 127 ALR 827.

Applicability of statute or municipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-23. Exclusive jurisdiction ceded over lands acquired by United States; exceptions.

Exclusive jurisdiction in and over any lands acquired by the United States as provided in Code Section 50-2-22 is ceded to the United States for all purposes except service upon such lands of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands. The state retains its civil and criminal jurisdiction over persons and citizens in the ceded territory, as over other persons and citizens in this state, except as to any ceded territory owned by the United States and used by the Department of Defense and except as to any ceded territory owned by the United States and used by the Department of Justice for penal institutions, custodial institutions, or correctional institutions, but the state retains jurisdiction over the taxation of private property and the regulation of public utility services in any ceded territory. Nothing in this Code section shall interfere with the jurisdiction of the United States over any matter or subjects set out in the acts of Congress donating money for the erection of public buildings for the transaction

of its business in this state or with any laws, rules, or regulations that Congress may adopt for the preservation and protection of its property and rights in the ceded territory and the proper maintenance of good order therein. (Ga. L. 1890-91, p. 201, § 1; Civil Code 1895, § 25; Civil Code 1910, § 26; Ga. L. 1927, p. 352, § 2; Code 1933, § 15-302; Ga. L. 1952, p. 264, § 1; Ga. L. 1963, p. 555, § 1.)

JUDICIAL DECISIONS

Statutes void when statutes attempt to waive state's right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) attempted to waive the state's sovereign right to tax, the statutes were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action, and it was not error for the court to dismiss the same on demurrer (now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Taxation of private property upon United States' lands. — Former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I) and were, to the extent that they undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition seeks to defeat the county's attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state's right to tax, the petition alleged no cause of action, and the court did not err in sustaining the demurrers (now motion to dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in *pari materia* with Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with

the business of the United States. Taxing the private property could not conceivably interfere with the government's business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Cession of complete and general jurisdiction over United States lands. — The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an Act of repeal or amendment of prior Acts. It is a new and general statute by which this state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for "purposes of government." Former Code 1933, § 15-302 (see O.C.G.A. § 50-2-23) was in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Former Code 1933, § 15-302 (see O.C.G.A. § 50-2-23) was a partial cession of jurisdiction; while former Code 1933, § 15-303 described the time of vesting. Neither purported to condition state consent upon federal acceptance. *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967).

O.C.G.A. § 50-2-23 as offer to cede criminal jurisdiction to United States. — This section amounts to an offer to cede criminal jurisdiction to the United States which, to become effective, must be accepted in the proper manner by the United States, and the burden of showing such acceptance rests with the defendant in a criminal case who contends that the state court is without jurisdiction to try the defendant for an offense against state laws allegedly committed within the confines of the military installation. *Dob-*

bins v. State, 114 Ga. App. 403, 151 S.E.2d 549 (1966).

Requisite showing of federal acceptance of jurisdiction. — After a deputy sheriff arrested the defendant for driving under the influence and driving without a license in a park and, at the subsequent trial, the arresting officer testified that the park was federal property, managed by the U.S. Army Corp of Engineers, assuming that the park was federal property used by the Department of Defense, since the defendant failed to make the requisite showing of federal acceptance of criminal jurisdiction, the trial court properly declined to dismiss the prosecution. *Jackson v. State*, 183 Ga. App. 594, 359 S.E.2d 457 (1987).

Laws in federal territory derive their authority and force from United States. — Any law existing in territory over which the United States has “exclusive” sovereignty must derive its authority and force from the United States and is for that reason federal law, even though having its origin in the law of the state within the exterior boundaries of which the federal area is situated. *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952).

Lands acquired by United States free from certain state interference. — When lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to

the qualification that if upon them forts, arsenals, or other public buildings are erected for the use of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. *Brittain v. Reid*, 220 Ga. 794, 141 S.E.2d 903 (1965).

State possesses jurisdiction over robbery in post office. — When a robbery occurred in a United States post office, the defendant’s contention that the federal government had exclusive jurisdiction over the offense since the robbery occurred on federal property was without merit. *Harris v. State*, 186 Ga. App. 756, 368 S.E.2d 527 (1988).

Arrest on Dobbins Air Force Base was lawful. — Trial court did not err in concluding that a defendant’s arrest on Dobbins Air Force Base was lawful based on evidence that the State of Georgia retained criminal jurisdiction over lands in the state used for federal military purposes, including a Department of the Army jurisdiction statement specifically for Dobbins recognizing the the United States did not have exclusive jurisdiction over the property. *Devega v. State*, 286 Ga. 448, 689 S.E.2d 293 (2010).

Cited in *Shea v. Gehan*, 70 Ga. App. 229, 28 S.E.2d 181 (1943); *Powers v. State*, 261 Ga. App. 296, 582 S.E.2d 237 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Regulating public utilities in any ceded territory is not incompatible with the Georgia Constitution and former Code 1933, § 15-302 (see O.C.G.A. § 50-2-23) effectively ceded jurisdiction over lands used by the Department of Defense. 1952-53 Op. Att’y Gen. p. 8.

Taxation of property of public utilities on federal property. — State has jurisdiction, for purposes of taxation, of property of public utilities located on property in this state belonging to the federal government. 1952-53 Op. Att’y Gen. p. 186.

Board usually has no authority to regulate post-secondary educational institutions. — State Board of Education

is without authority to regulate post-secondary educational institutions which are operated on federal military bases, unless the authority to do so is granted by federal statute, regulation, or consent. 1978 Op. Att’y Gen. No. 78-67.

Coroner has no authority to sign death certificate of civilian employee of the United States army who committed suicide on a military reservation within the boundaries of a county of Georgia. 1975 Op. Att’y Gen. No. 75-97.

Building safety council has no right or duty to inspect: (a) properties of the federal government such as military reservations; or (b) properties, such as military housing projects, owned by the gov-

ernment but leased to private persons for nongovernmental uses. 1948-49 Op. Att’y Gen. p. 394.

Federal installations purchasing distilled spirits directly from distiller. — Military or naval installation which is located on property that has been ceded to the United States by this state has the right to buy distilled spirits directly from the distiller without the payment of Georgia tax or warehouse charges. 1948-49 Op. Att’y Gen. p. 591.

Juvenile court does not have jurisdiction on military base. — Fort Stewart remains in the exclusive jurisdiction of the federal government and the Juvenile Court of Liberty County does not have jurisdiction over juveniles who have allegedly committed delinquent acts on the military base. 1994 Op. Att’y Gen. No. U94-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

ALR. — Applicability of statute or mu-

nicipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-23.1. Cession of concurrent jurisdiction to United States over certain lands within state; application to Governor; procedure for effecting cession.

(a) The consent of the State of Georgia is given to the cession of concurrent jurisdiction to the United States of America over lands within the boundaries of the State of Georgia that are owned by the United States of America or over which such jurisdiction is necessary for the effective administration and management of the lands owned by the United States.

(b) Whenever the United States of America desires to acquire concurrent jurisdiction over lands of the type described in subsection (a) of this Code section, application therefor shall be made to the Governor by the principal officer of the agency of the United States having administrative and legal control over the land and shall describe with specificity the lands for which concurrent jurisdiction is sought. For the purpose of this Code section, “legal control” shall include the authority to sell, convey, rent, lease, make covenants, alienate, or otherwise control by lawful means, any and all interests and rights in real property including but not limited to the right of possession to, use of, and travel upon or over relevant lands.

(c) Upon receipt of an application to acquire concurrent jurisdiction on behalf of the United States over lands of the type described in subsection (a) of this Code section, the Governor is authorized to cede concurrent jurisdiction over such lands to the United States.

(d) Cession of concurrent jurisdiction shall be effected by means of negotiation and execution of an agreement between the Governor on

behalf of the state and the principal officer of the United States agency having administrative and legal control over the land. Any jurisdiction not specifically ceded in any such agreement is reserved to the state. Cession of such concurrent jurisdiction as is ceded by the state in any such agreement shall become effective upon the acceptance by the United States indicated in writing upon the instrument of cession by the authorized official or officials of the United States.

(e) Nothing contained in this Code section or in any instrument executed pursuant to it shall be construed as consent either to the preemption of any of the laws and regulations of this state or to the exemption of any federal lands from regulation pursuant to the laws and regulations of this state to the extent such lands are subject thereto. Nor shall any provision of this law or any instrument executed pursuant thereto be construed as a limitation or restriction upon the power, right, and authority of the General Assembly to enact laws and authorize the promulgation of regulations. (Code 1933, § 15-302.1, enacted by Ga. L. 1982, p. 1867, § 1; Code 1981, § 50-2-23.1, enacted by Ga. L. 1982, p. 1867, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

50-2-23.2. Concurrent jurisdiction over lands of the National Infantry Museum; limits to concurrent jurisdiction; cession of concurrent jurisdiction; state laws and regulations not preempted.

(a) The consent of the State of Georgia is given to the cession of concurrent jurisdiction to the United States of America over lands within the boundaries of the State of Georgia which are owned by the National Infantry Foundation and which are incorporated into and used for the operation of the National Infantry Museum in Columbus, Georgia, or over which such jurisdiction is necessary for the effective administration and management of such museum, specifically including the following described territory:

All that certain tract of land containing 90.63 acres located in Land Lots 37, 54, 55, 59 and 60 of the 7th Land District, Columbus, Muscogee County, Georgia, and being more particularly described as follows according to the survey by Barrett & McPherson, Inc., Engineers & Land Surveyors of Eufaula, Alabama:

Starting at an iron pin at the intersection of the West right of way of Fort Benning Boulevard and the North line of Land Lot 37 of the 7th Land District of Muscogee County, Georgia, being a point on the

boundary of the Fort Benning Military Reservation, go along the North line of said Land Lot 37 and the boundary of the Fort Benning Military Reservation North 88 degrees 47 minutes 39 seconds West 12.45 feet to a concrete monument which lies 50 feet West of the centerline of the Southbound lane of Fort Benning Boulevard, as measured at right angles thereto, thence continue along the North line of Land Lot 37 and the boundary of the Fort Benning Military Reservation North 88 degrees 47 minutes 39 seconds West 401.06 feet to a railroad rail iron stake at the Northeast corner of that certain tract of land conveyed by the United States of America to the City of Columbus, Georgia by Quit Claim Deed dated 25 August, 1975 and recorded in Deed Book 1563 at pages 373, et seq., in the Office of the Clerk of Superior Court of Muscogee County, Georgia, also being the POINT of BEGINNING; thence along the East and South lines of said tract of land Quit Claimed to the City of Columbus, Georgia the following courses: South 20 degrees 37 minutes 05 seconds West 936.78 feet to an iron pin; South 20 degrees 36 minutes 04 seconds West 2493.94 feet to an iron pin; South 20 degrees 35 minutes 16 seconds West 770.61 feet; a curve, concave Easterly, having a radius of 5786.81 feet, an arc length of 2568.74 feet, and a chord of South 07 degrees 52 minutes 16 seconds West 2547.70 feet to an iron pin; South 04 degrees 49 minutes 11 seconds East 207.24 feet to an iron pin; a curve, concave Westerly, having a radius of 3611.86 feet, an arc length of 17.47 feet, and a chord of South 04 degrees 40 minutes 52 seconds East 17.47 feet to an iron pin; a curve, concave Northwest-erly, having a radius of 596.89 feet, an arc length of 696.09 feet, and a chord of South 58 degrees 38 minutes 25 seconds West 657.31 feet to an iron pin; thence North 87 degrees 57 minutes 02 seconds West 156.25 feet to an iron pin 50 feet East of the centerline of South Lumpkin Road, as measured at right angle thereto; thence along a line 50 feet East of the centerline of South Lumpkin Road, as measured at right angles thereto, the following courses: a curve, concave Southeasterly, having a radius of 3798.62 feet, an arc length of 329.36 feet. and a chord of North 07 degrees 58 minutes 57 seconds East 329.25 feet to an iron pin; North 10 degrees 31 minutes 29 seconds East 1115.76 feet to an iron pin; a curve, concave Westerly, having a radius of 5791.07 feet, an arc length of 625.22 feet, and a chord of North 07 degrees 25 minutes 55 seconds East 624.91 feet to an iron pin; North 04 degrees 20 minutes 20 seconds East 2587.34 feet to an iron pin; a curve, concave Westerly, having a radius of 11178.19 feet, an arc length of 613.36 feet, and a chord of North 02 degrees 46 minutes 01 seconds East 613.29 feet to an iron pin; North 01 degree 14 minutes 08 seconds East 26.19 feet to an iron pin at the Southwest corner of that certain 60.05 acre tract of land conveyed by the United States of America to Bickerstaff Clay Products Company, Inc. by Exchange Deed recorded in Deed Book 4159 at pages 213, et

seq., in the Office of the Clerk of Superior Court of Muscogee County, Georgia; thence along the South and East lines of said tract of land conveyed to Bickerstaff Clay Products Company, Inc. the following courses: South 88 degrees 46 minutes 21 seconds East 1140.02 feet to an iron pin; North 20 degrees 37 minutes 20 seconds East 1021.08 feet to an iron pin; North 20 degrees 36 minutes 33 seconds East 884.18 feet to an iron pipe on the aforementioned North line of Land Lot 37; thence along the North line of Land Lot 37 South 88 degrees 44 minutes 49 seconds East 158.99 feet to the POINT of BEGINNING.

(b) Such concurrent jurisdiction granted to the United States of America by this Code section shall be limited to the provision of law enforcement services, security, and fire protection; the enforcement of applicable laws, rules, regulations, and ordinances of the state, the United States, and Columbus, Georgia; the trial of offenses and ordinance violations in the courts the United States, the State of Georgia, and Columbus, Georgia; and to such additional matters as may be the subject of the written agreement provided for in subsection (c) of this Code section.

(c) Cession of concurrent jurisdiction shall be effected by means of negotiation and execution of an agreement between the Governor on behalf of the state, the commanding general of the United States Army Infantry Center at Fort Benning, the governing authority of Columbus, Georgia, and the governing board of the National Infantry Foundation or any successor owner or operator of the National Infantry Museum and the property on which it is located. Any jurisdiction not specifically ceded in any such agreement is reserved to the state. Cession of such concurrent jurisdiction as is ceded by the state in any such agreement shall become effective upon the acceptance by the United States indicated in writing upon the instrument of cession by the authorized official or officials of the United States.

(d) Nothing contained in this Code section or in any instrument executed pursuant to it shall be construed as consent either to the preemption of any of the laws and regulations of this state or to the exemption of any lands from regulation pursuant to the laws and regulations of this state to the extent such lands are subject thereto. No provision of this Code section or any instrument executed pursuant to this Code section shall be construed as a limitation or restriction upon the power, right, and authority of the General Assembly to enact laws and authorize the promulgation of regulations. (Code 1981, § 50-2-23.2, enacted by Ga. L. 2005, p. 559, § 1/HB 420.)

50-2-24. Vesting of jurisdiction; exemption from state, county, or municipal charges.

The jurisdiction ceded as provided in Code Section 50-2-23 shall not vest until the United States has acquired the title to the lands by purchase, condemnation, or otherwise. As long as the lands remain the property of the United States when acquired by purchase, condemnation, or otherwise, and no longer, the same shall be and continue to be exempt and exonerated from all state, county, and municipal assessment, or other charges which may be levied or imposed under authority of the state. (Ga. L. 1927, p. 352, § 3; Code 1933, § 15-303.)

JUDICIAL DECISIONS**Cession of complete and general jurisdiction over United States lands.**

— The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an Act of repeal or amendment of prior Acts. It is a new and general statute by which this state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for “purposes of government.” This section is in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVIII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Portion of O.C.G.A. § 50-2-24 exempting ceded lands from taxation was void. — That portion of this section purporting to exempt and exonerate from “all state, county, and municipal taxation” such ceded lands was in plain and direct violation of Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I), and was void. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Statutes void when statutes attempt to waive state’s right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) attempted to waive the state’s sovereign right to tax, the statutes were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action, and it was not error for the court to dismiss the cause on demurrer

(now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Counties have right to tax private property located upon United States’ lands. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I), and were, to the extent that the statutes undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition seeks to defeat the county’s attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state’s right to tax, the petition alleges no cause of action, and the court did not err in sustaining the demurrers (now motion to dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in pari materia with Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with the business of the United States. Taxing the private property could not conceivably interfere with the government’s business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

O.C.G.A. § 50-2-24 describes time of vesting of jurisdiction ceded in O.C.G.A. § 50-2-22. — Former Code 1933, § 15-301 (see O.C.G.A. § 50-2-22) was a partial cession of jurisdiction; while former Code 1933, § 15-303 (see O.C.G.A.

§ 50-2-24) described the time of vesting. Neither purported to condition state consent upon federal acceptance. *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 143, 145.

C.J.S. — 84 C.J.S., Taxation, §§ 232, 233.

ALR. — Applicability of statute or municipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-25. State consent to acquisition by United States of lands for forest and wildlife purposes; concurrent jurisdiction.

The consent of the state is given to the acquisition by the United States by purchase, gift, exchange, or by condemnation according to law, of only such lands as may be contracted, proposed, or offered for sale in writing by the ostensible owner to the United States, in which writing the owner consents to such acquisition, of such lands in all those counties in the northern and central portions of the state south to and including the Counties of Stewart, Webster, Marion, Taylor, Upson, Monroe, Jones, Putnam, Greene, Taliaferro, Wilkes, Jasper, Elbert, Warren, Hancock, Oglethorpe, Dodge, Treutlen, Laurens, Butts, and Richmond, and in and around the Okefenokee Swamp as in the opinion of state and federal government officials may be needed for the establishment, consolidation, or extension of national forests, forest experiment stations, wildlife sanctuaries, or for rights of way and land on which to build roads, highways, and bridges in the Okefenokee Swamp or for rights of way and land on which to build roads, highways, and bridges to connect the swamp roads with other highways, or for any development purposes best suited on these lands to be acquired by the United States. The state shall retain concurrent jurisdiction with the United States in and over such lands in all cases insofar as civil process is concerned, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime outside or within the jurisdiction may be executed thereon in like manner as if this law had not been enacted. In all condemnation proceedings, the rights of the federal government shall be limited to the specific objects set forth by laws of the United States in regard to national forests or wildlife sanctuaries and rights of way on which to build roads, highways, and bridges. (Ga. L. 1929, p. 239, § 1; Code 1933, § 15-304; Ga. L. 1935, p. 442, § 1; Ga. L. 1937, p. 458, § 1; Ga. L. 1982, p. 3, § 50.)

Editor's notes. — For compilation of Acts ceding Georgia land to the United States, see the Local Laws Index of this Code.

OPINIONS OF THE ATTORNEY GENERAL

This section gives consent of state to acquisition by United States of lands in designated areas; land in other than the designated areas could not be acquired prior to the consent of this state by the legislature. 1958-59 Op. Att'y Gen. p. 277.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

50-2-26. Reacquisition of jurisdiction over state maintained highways in ceded territory.

Upon the concurrence of the United States by its appropriate action, this state shall thereby reacquire civil and criminal jurisdiction over persons and citizens found upon any highway or road maintained and used by this state for highway purposes within any ceded territory owned by the United States and used by the Department of Defense. (Ga. L. 1957, p. 319, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125.

50-2-27. Retrocession of jurisdiction over lands owned by the United States.

(a) The consent of this state is given to the retrocession of jurisdiction, either partially or wholly, by the United States over land owned by the United States within the boundaries of this state; and the Governor is authorized to accept for the state such retrocession of jurisdiction.

(b) Retrocession of jurisdiction shall be effected upon written notice by the principal officer of the agency of the United States having supervision and control over the land to the Governor, such notice describing the land by metes and bounds and specifying the nature of the jurisdiction therein to be retroceded to the state and the entry of acceptance upon the written notice by the Governor. (Ga. L. 1975, p. 1301, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125.

50-2-28. Capitol Square designated; state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds for traffic movement.

(a) The following area is designated as “Capitol Square”:

(1) The property owned by this state and the sidewalks and streets within the area in the City of Atlanta bounded by Washington Street, Trinity Avenue, Memorial Drive, Capitol Avenue, and Martin Luther King, Jr. Drive; and

(2) The buildings and property owned and operated by the Georgia Building Authority which are located on or bounded by Central Avenue, Trinity Avenue, Memorial Drive, Capitol Avenue, Jessie Hill, Jr. Drive, Martin Luther King, Jr. Drive, Peachtree Street, and Marietta Street.

(b) The state shall have the same control and jurisdiction over the use of the buildings and grounds owned by the state and designated as Capitol Square as have been authorized by law for the control and supervision of the public property formerly known as the State Capitol Buildings and Grounds.

(c) The Governor is authorized and empowered to deed, upon unanimous approval of the Governor, an appointee of the Governor who is not the Attorney General, and state auditor, upon such terms and conditions as they may deem to be to the best interests of the state, to the City of Atlanta or other appropriate governmental entity such part of the grounds owned by the state and facing Capitol Avenue that is deemed necessary and essential to widen, straighten, and improve Capitol Avenue at the entrance to Martin Luther King, Jr. Drive, so as to route traffic to such other property which is essential or necessary to aid in the movement of traffic around Capitol Square. (Ga. L. 1953, Nov.-Dec. Sess., p. 164, §§ 1-3; Ga. L. 1988, p. 426, § 1; Ga. L. 2010, p. 137, § 2/HB 1074.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “the” was inserted preceding “Attorney General” near the beginning of subsection (c).

CHAPTER 3

STATE FLAG, SEAL, AND OTHER SYMBOLS

Article 1

State and Other Flags

Sec.	
50-3-1.	Description of state flag; militia to carry flag; defacing public monuments; obstruction of Stone Mountain.
50-3-2.	Pledge of allegiance to state flag.
50-3-3.	Display of state flag.
50-3-4.	Designation of Secretary of State as custodian of state flag; procurement and furnishing of flags to schools.
50-3-4.1.	School superintendents and administrative officials authorized to display copies of national motto and American and Georgia flags in certain places; means of acquisition.
50-3-5.	Preservation of Confederate flags.
50-3-6.	Display of Spanish-American War flags.
50-3-7.	Duty of Governor to accept flags.
50-3-8.	Use of national, state, or Confederate flag for advertising, selling, or promoting the sale of merchandise unlawful.
50-3-9.	Abuse of federal, state, or Confederate flag unlawful.
50-3-10.	Use of flag for decorative or patriotic purposes.
50-3-11.	Penalty.
50-3-12.	State flags to honor service of deceased qualifying elected state officials.
50-3-13.	State flags to honor service of deceased qualifying public safety officers.

Article 2

Great Seal of the State

50-3-30.	Description; custody.
50-3-31.	Use and display; facsimile.
50-3-32.	Authorized and unauthorized use or display.

Article 3

Other State Symbols

Sec.	
50-3-50.	State bird.
50-3-51.	State game bird.
50-3-52.	State fish.
50-3-53.	State floral emblem.
50-3-54.	State wild flower.
50-3-55.	Official tree.
50-3-56.	Official fossil.
50-3-57.	Official gem.
50-3-58.	Official insect.
50-3-59.	Official mineral.
50-3-60.	Official song.
50-3-61.	Official waltz.
50-3-62.	Official butterfly.
50-3-63.	Official reptile.
50-3-64.	Official historic drama.
50-3-65.	Official vegetable.
50-3-66.	State theater.
50-3-67.	Official state folk festival.
50-3-68.	Official 'Possum.
50-3-69.	Official musical theatre.
50-3-70.	Official state fruit.
50-3-71.	Poultry Capital of the World.
50-3-72.	State crop; official state peanut monument.
50-3-73.	Official folk dance.
50-3-74.	Official railroad museum.
50-3-75.	Official beef barbecue championship cookoff; official pork barbecue championship cookoff.
50-3-76.	Official tartan.
50-3-77.	Official state transportation history museum designated; maximization of advertising programs.
50-3-78.	State official prepared food.
50-3-79.	Official center for character education.
50-3-80.	Official Frontier and Southeastern Indian Interpretive Center.
50-3-81.	Official amphibian.
50-3-82.	Official cold water game fish.
50-3-83.	Official salt-water fish.
50-3-84.	Official designation of First Mural City.

Sec.	Sec.
50-3-85. Official Georgia historical civil rights museum.	language; constitutional rights not denied; authorization for documents and forms in other languages; exceptions.
Article 4	
Official State Language	
50-3-100. English designated as official	

Editor’s notes. — By resolution (see Ga. L. 1982, p. 1355), the General Assembly designated the Georgia Museum of Art at the University of Georgia as the State Museum of Art of the State of Georgia.

By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia. See also Code Section 50-3-100.

OPINIONS OF THE ATTORNEY GENERAL

Resolution (Ga. L. 1986, p. 529) adopting English as the official language of the State of Georgia has the

force and effect of law. 1995 Op. Att’y Gen. No. U95-16.

ARTICLE 1

STATE AND OTHER FLAGS

50-3-1. Description of state flag; militia to carry flag; defacing public monuments; obstruction of Stone Mountain.

(a) The flag of the State of Georgia shall consist of a square canton on a field of three horizontal bands of equal width. The top and bottom bands shall be scarlet and the center band white. The bottom band shall extend the entire length of the flag, while the center and top bands shall extend from the canton to the fly end of the flag. The canton of the flag shall consist of a square of blue the width of two of the bands, in the upper left of the hoist of the flag. In the center of the canton shall be placed a representation in gold of the coat of arms of Georgia as shown in the center of the obverse of the Great Seal of the State of Georgia adopted in 1799 and amended in 1914. Centered immediately beneath the coat of arms shall be the words “IN GOD WE TRUST” in capital letters. The coat of arms and wording “IN GOD WE TRUST” shall be encircled by 13 white five-pointed stars, representing Georgia and the 12 other original states that formed the United States of America. Official specifications of the flag, including color identification system, type sizes and fonts, and overall dimensions, shall be established by the Secretary of State, who pursuant to Code Section 50-3-4 serves as custodian of the state flag. Every force of the organized militia shall carry this flag while on parade or review.

(b)(1) It shall be unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile, or abuse contemptuously any publicly owned monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof, and no officer, body, or representative of state or local government or any department, agency, authority, or instrumentality thereof shall remove or conceal from display any such monument, plaque, marker, or memorial for the purpose of preventing the visible display of the same. A violation of this paragraph shall constitute a misdemeanor.

(2) No publicly owned monument or memorial erected, constructed, created, or maintained on the public property of this state or its agencies, departments, authorities, or instrumentalities in honor of the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof shall be relocated, removed, concealed, obscured, or altered in any fashion; provided, however, that appropriate measures for the preservation, protection, and interpretation of such monuments or memorials shall not be prohibited.

(3) Conduct prohibited by paragraphs (1) and (2) of this subsection shall be enjoined by the appropriate superior court upon proper application therefor.

(4) It shall be unlawful for any person, firm, corporation, or other entity acting without authority to mutilate, deface, defile, abuse contemptuously, relocate, remove, conceal, or obscure any privately owned monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof. Any person or entity who suffers injury or damages as a result of a violation of this paragraph may bring an action individually or in a representative capacity against the person or persons committing such violations to seek injunctive relief and to recover general and exemplary damages sustained as a result of such person's or persons' unlawful actions.

(c) Any other provision of law notwithstanding, the memorial to the heroes of the Confederate States of America graven upon the face of Stone Mountain shall never be altered, removed, concealed, or obscured in any fashion and shall be preserved and protected for all time as a tribute to the bravery and heroism of the citizens of this state who suffered and died in their cause. (Ga. L. 1916, p. 158, § 3; Code 1933,

§ 86-1004; Ga. L. 1951, p. 311, § 43; Ga. L. 1955, p. 10, § 90; Ga. L. 1956, p. 38, § 1; Ga. L. 2001, p. 1, § 1; Ga. L. 2003, p. 26, § 1; Ga. L. 2004, p. 731, § 1.)

Cross references. — Display of state flag by agencies, § 45-12-83.1.

Editor's notes. — Ga. L. 2003, p. 26, § 2, not codified by the General Assembly, called for a referendum to modify the state flag which was held on March 2, 2004, and the 2003 State Flag, adopted at the 2003 Session of the General Assembly, was approved by a vote of 577,370 to 212,020.

Ga. L. 2003, p. 26, § 3, not codified by the General Assembly, provides for severability.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 305 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 256 (2003).

JUDICIAL DECISIONS

Constitutionality of flag. — Georgia state flag, which incorporated the stars and bars of the Confederate flag, did not violate an African-American citizen's equal protection rights, even though a discriminatory purpose was a motivating factor in the passage of O.C.G.A. § 50-3-1 since the evidence failed to show a sufficiently concrete, present-day discriminatory impact on African-Americans. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

State flag, incorporating the stars and bars of the Confederate flag, did not violate the due process clause by depriving an African-American citizen of any fundamental privacy interest in associating with white people free from unwarranted government intrusion since the record did not support the claim. Moreover, the plaintiff's right to associate with white people in general is not the type of intimate relationship garnering constitutional protection under this theory. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

African-American citizen's argument that the state flag, incorporating the stars and bars of the Confederate flag, compelled the African-American citizen to be the courier of a morally objectionable ideological message failed because the flag on the flag's face does not promulgate a sufficiently clear message of discrimination and because the record contained no evidence that the citizen was forced to acknowledge the flag in any way. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

Display of the Georgia state flag did not violate an African-American citizen's constitutional rights to equal protection and freedom of expression. *Coleman v. Miller*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

Validity under federal law. — For discussion of the state flag in relation to the federal Smith Act, 18 U.S.C. § 2385, Title II of the Civil Rights Act, 42 U.S.C. § 2000a, and the Voting Rights Act, 42 U.S.C. § 1971(b), see *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S.

1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

Cited in *Gay v. Owens*, 292 Ga. 480, 738 S.E.2d 614 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, §§ 1, 2.

C.J.S. — 36A C.J.S., Flags, § 1 et seq.

50-3-2. Pledge of allegiance to state flag.

The following is adopted as the pledge of allegiance to the state flag:

“I pledge allegiance to the Georgia flag and to the principles for which it stands: Wisdom, Justice, and Moderation.” (Ga. L. 1951, p. 311, § 47; Ga. L. 1955, p. 10, § 94.)

Cross references. — Student directory information, registering to vote and with selective service, pledge of allegiance, § 20-2-310.

Emotion, and Political Belief: The Search for the Constitutional Limit to Patriotic Education in Public Schools,” see 43 Ga. L. Rev. 447 (2009).

Law reviews. — For article, “Ritual,

50-3-3. Display of state flag.

The state flag shall be displayed on appropriate occasions in the public and private schools of this state and in all patriotic meetings, and the citizens of the state are requested to take the pledge of allegiance set out in Code Section 50-3-2. (Ga. L. 1951, p. 311, § 48; Ga. L. 1955, p. 10, § 95.)

OPINIONS OF THE ATTORNEY GENERAL

School display. — O.C.G.A. § 50-3-3 requires that the state flag be displayed in the schools on appropriate occasions, as determined by local school boards, within their scope of discretion relating to educational responsibilities; and local school

boards may fix the time between the hours of 7:30 a.m. and 4:00 p.m. on days when school attendance is required as an “appropriate occasion.” 1994 Op. Att’y Gen. No. U94-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-4. Designation of Secretary of State as custodian of state flag; procurement and furnishing of flags to schools.

The Secretary of State is designated as the custodian of the state flag. From funds made available for such purpose, the Secretary of State shall procure suitable state flags; and he shall be authorized to furnish, without cost, to the various public schools of this state, to the superior

and state courts, and to other departments and agencies of the state, counties, or municipal authorities, such flags for their use in displaying same. From such funds he is authorized also to procure such flags and facsimiles thereof as may cause the flag sufficiently and properly to be made known and displayed. (Ga. L. 1956, p. 38, § 2; Ga. L. 1970, p. 192, § 1; Ga. L. 1981, p. 986, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2. **C.J.S.** — 36A C.J.S., Flags, §§ 3, 4.

50-3-4.1. School superintendents and administrative officials authorized to display copies of national motto and American and Georgia flags in certain places; means of acquisition.

(a) Local school superintendents of the public schools in this state and the appropriate administrative officials of the various institutions and agencies of this state, provided that sufficient funds or the items themselves are available as provided in subsection (b) of this Code section, are authorized to place a durable poster or framed copy representing the following which may be displayed in each public elementary and secondary school library and classroom in this state and in each public building or facility in this state which is maintained or operated by state funds:

- (1) Our national motto, “In God We Trust”;
- (2) A true and correct representation of the American flag, which shall be centered under the national motto; and
- (3) A true and correct representation of the Georgia state flag.

(b) The copies or posters authorized by this Code section shall either be donated or shall be purchased solely with funds made available through voluntary contributions to the local school boards in the case of displays in public schools or to the Georgia Building Authority in the case of displays in state buildings and facilities. (Ga. L. 1982, p. 913, § 1; Code 1981, § 50-3-4.1, enacted by Ga. L. 1982, p. 913, § 2.)

Editor’s notes. — Ga. L. 1982, p. 913, § 3, effective April 13, 1982, not codified by the General Assembly, provided: “A copy of this Act shall be mailed directly to each school board in this state. A copy of

this Act shall be mailed directly to each board member, school superintendent, and curriculum director of the state school system of Georgia.”

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality. — Provision of state provisions of either the state or O.C.G.A. § 50-3-4.1 allowing display of federal Constitutions. 2000 Op. Att’y Gen. the motto “In God We Trust” in public does No. 00-9. not violate the separation of church and

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2. **C.J.S.** — 36A C.J.S., Flags, §§ 3, 4.

50-3-5. Preservation of Confederate flags.

The flags of the Georgia troops who served in the army of the Confederate States, and which have been returned to the state by the United States government, shall be preserved for all time in the capitol as priceless mementos of the cause they represented and of the heroism and patriotism of the men who bore them. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1005; Ga. L. 1951, p. 311, § 44; Ga. L. 1955, p. 10, § 91.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2. **C.J.S.** — 36A C.J.S., Flags, §§ 3, 4.

50-3-6. Display of Spanish-American War flags.

The flags of the Georgia regiments which engaged in the Spanish-American War shall be displayed in the corridors of the capitol in a manner similar to those of the Confederate regiments. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1006; Ga. L. 1951, p. 311, § 45; Ga. L. 1955, p. 10, § 92.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2. **C.J.S.** — 36A C.J.S., Flags, §§ 3, 4.

50-3-7. Duty of Governor to accept flags.

When any flag referred to in Code Section 50-3-5 or 50-3-6 is offered to the state, it shall be the duty of the Governor to accept it in behalf of the state and to make such provisions for its preservation as may be necessary to protect and preserve it from the ravages of time, dust, and moths. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1007; Ga. L. 1951, p. 311, § 46; Ga. L. 1955, p. 10, § 93; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2. **C.J.S.** — 36A C.J.S., Flags, §§ 3, 4.

50-3-8. Use of national, state, or Confederate flag for advertising, selling, or promoting the sale of merchandise unlawful.

(a) It shall be unlawful for any person, firm, or corporation to copy, print, publish, or otherwise use the flag of the United States, the flag, coat of arms, or state emblem of the State of Georgia, or the flag or emblem of the Confederate States of America, or any flag or emblem used by the Confederate States of America or the military or naval forces of the Confederate States of America at any time within the years 1860 to 1865, both inclusive, for the purpose of advertising, selling, or promoting the sale of any article of merchandise whatever within this state.

(b) Notwithstanding subsection (a) of this Code section, any person, firm, or corporation which contracts with the state to publish an official Code shall be authorized to use the state emblem on the cover of the publication. Utilization by the contracting person, firm, or corporation of the cover of the publication, with the state emblem thereon, for advertising purposes shall not constitute a violation of subsection (a) of this Code section. (Ga. L. 1960, p. 985, § 1; Ga. L. 1982, p. 3, § 50.)

Cross references. — Enactment of official Code, § 1-1-1. Offenses against public order and safety, T. 16, C. 11.

OPINIONS OF THE ATTORNEY GENERAL

Replica of state flag may not be printed upon packets or envelopes containing sugar in order to promote the image of this state in the minds of the people who use the product. 1967 Op. Att’y Gen. No. 67-323.

“Public service” advertisement

bearing name of private sponsor. — Proposed “public service” advertisement which prints, publishes, or otherwise uses the flag of the State of Georgia and bears the name of a private corporate sponsor would be in violation of O.C.G.A. § 50-3-8. 1992 Op. Att’y Gen. No. 92-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, § 3. 74 Am. Jur. 2d, Trademarks and Tradenames, § 41.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, § 79. 87 C.J.S., Trade-

marks, Trade Names and Unfair Competition, § 208.

ALR. — Propriety of prohibition of display or wearing of confederate flag, 66 ALR6th 493.

50-3-9. Abuse of federal, state, or Confederate flag unlawful.

It shall be unlawful for any person, firm, or corporation to mutilate, deface, defile, or abuse contemptuously the flag of the United States, the flag, coat of arms, or emblem of the State of Georgia, or the flag or emblem of the Confederate States of America by any act whatever. (Ga. L. 1960, p. 985, § 2.)

Cross references. — Offenses against public order and safety, T. 16, C. 11.

JUDICIAL DECISIONS

Editor's notes. — Many of these annotations were based on cases decided prior to the U.S. Supreme Court decisions as to burning of the flag of the United States (See *Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) and *United States v. Eichman*, 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990)).

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 26-2803, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

O.C.G.A. § 50-3-9 is not unconstitutional. — Language of this section making it unlawful to mutilate, deface, defile, or contemptuously abuse the flags by any act is not vague, uncertain, or indefinite, and this section is accordingly not unconstitutional. *Hinton v. State*, 223 Ga. 174, 154 S.E.2d 246 (1967), rev'd on other grounds sub nom. *Anderson v. Georgia*, 390 U.S. 206, 88 S. Ct. 902, 19 L. Ed. 2d 1039 (1968).

Freedom of speech not involved in prohibitions in O.C.G.A. § 50-3-9. —

Conduct sought to be prohibited by this section is conduct which shows open disrespect for the flag, and no question of freedom of speech is involved. *Hinton v. State*, 223 Ga. 174, 154 S.E.2d 246 (1967), rev'd on other grounds sub nom. *Anderson v. Georgia*, 390 U.S. 206, 88 S. Ct. 902, 19 L. Ed. 2d 1039 (1968); *Monroe v. State*, 250 Ga. 30, 295 S.E.2d 512 (1982).

Flag burning is not protected by the free speech provision of the First Amendment as the state's interest in protecting the physical integrity of the United States flag justifies regulation of both specific destructive conduct toward the flag and minor limitations on symbolic speech concomitant to that conduct. *Monroe v. State*, 250 Ga. 30, 295 S.E.2d 512 (1982).

Conviction for mutilating, defacing, and defiling a flag upheld. See *Bowles v. State*, 168 Ga. App. 763, 310 S.E.2d 250 (1983), cert. denied, 465 U.S. 1112, 104 S. Ct. 1619, 80 L. Ed. 2d 148 (1984).

Cited in *Monroe v. State Court*, 560 F. Supp. 542 (N.D. Ga. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, §§ 3, 4.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

ALR. — What constitutes violation of flag desecration statutes, 41 ALR3d 502.

Validity, and standing to challenge va-

lidity, of state statute prohibiting flag desecration and misuse, 31 ALR6th 333.

Propriety of prohibition of display or wearing of confederate flag, 66 ALR6th 493.

50-3-10. Use of flag for decorative or patriotic purposes.

Nothing in this article shall be construed to prevent the use of the flag of the United States or any flag, standard, color, shield, ensign, or other insignia of the State of Georgia or of the Confederate States of America for decorative or patriotic purposes, either inside or outside of any residence, store, place of business, public building, or school building. (Ga. L. 1960, p. 985, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, §§ 2, 3.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

ALR. — Propriety of prohibition of display or wearing of confederate flag, 66 ALR6th 493.

50-3-11. Penalty.

Any person, firm, or corporation who violates any provision of Code Section 50-3-8 or 50-3-9 shall be guilty of a misdemeanor. (Ga. L. 1960, p. 985, § 4.)

Cross references. — Offenses against public order and safety, T. 16, C. 11.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, § 2 et seq.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, § 79.

ALR. — What constitutes violation of flag desecration statutes, 41 ALR3d 502.

Validity, and standing to challenge validity, of state statute prohibiting flag desecration and misuse, 31 ALR6th 333.

50-3-12. State flags to honor service of deceased qualifying elected state officials.

(a) The purpose of this Code section is to recognize and honor those men and women who have dedicated their lives to public service through the representation of the citizens of this state and, in devoted service thereto, safeguarded the health, safety, and welfare of the citizens of the State of Georgia. To carry out this purpose, the Secretary of State shall, from funds made available for such purpose, furnish, without cost, a state flag to honor the service of a deceased qualifying elected state official, which state flag may be displayed in the funeral service of the deceased elected state official and thereafter given to the elected state official's estate.

(b) For purposes of this Code section, a "qualifying elected state official" is an official elected to serve in a state position and shall include members of the Georgia General Assembly and any official elected by

state-wide or local election to serve in a constitutionally created executive or judicial position or elected position on any constitutionally established board or commission. A person committing or convicted of a felony or crime of moral turpitude during or subsequent to holding office or who has been impeached or otherwise removed from public office shall not be considered a “qualifying elected state official.”

(c) The Secretary of State is authorized to administer the recognition program set forth in this Code section and to provide rules and regulations and enter into contracts necessary for the administration of the provisions and the purposes set forth in this Code section. (Code 1981, § 50-3-12, enacted by Ga. L. 2006, p. 214, § 1/HB 1246; Ga. L. 2007, p. 47, § 50/SB 103.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-12, as enacted by Ga. L. 2006, p. 631, § 1, was redesignated as Code Section 50-3-13. Another Code Section 50-3-12 was enacted by Ga. L. 2006, p. 214, § 1.

Editor’s notes. — Ga. L. 2006, p. 214, § 2/HB 1246, not codified by the General Assembly, provides that this Code section shall apply to the death of a qualifying elected state official occurring on or after July 1, 2006.

50-3-13. State flags to honor service of deceased qualifying public safety officers.

(a) The purpose of this Code section is to recognize and honor those brave men and women who have dedicated their lives to the public safety of the citizens of this state and, in devoted service thereto, contributed to the safety, security, and individual freedom of the citizens of the State of Georgia. To carry out this purpose, the Secretary of State shall, if requested, from funds made available for such purpose, furnish, without cost, a state flag to honor the service of a deceased qualifying public safety officer, which state flag may be displayed in the funeral service of the deceased public safety officer and thereafter given to the officer’s estate.

(b) For purposes of this Code section, a “qualifying public safety officer” is a peace officer, as defined in Code Section 35-8-2, sheriff, or firefighter, emergency medical technician, or emergency rescue specialist, as each is defined in Code Section 45-9-81, or member of the Georgia National Guard. In addition, “qualifying public safety officer” is an officer killed in the line of duty or an officer who has served as a qualifying public safety officer for a period of not less than five years. A person committing or convicted of a felony or crime of moral turpitude or whose certification or license to practice as a public safety officer is revoked or terminated shall not be considered a “qualifying public safety officer.”

(c) It shall be the duty of any state or local agency with knowledge of the death of a qualifying public safety officer who is an employee of such

agency or who retired from such agency to notify the Secretary of State's office for the purpose of providing a state flag to the deceased's estate. Any advocacy group representing the deceased or the deceased's department may also contact the Secretary of State on behalf of a deceased qualifying public safety officer.

(d) The Secretary of State is authorized to administer the recognition program set forth in this Code section and to provide rules and regulations and enter into contracts necessary for the administration of the provisions and the purposes set forth in this Code section. (Code 1981, § 50-3-13, enacted by Ga. L. 2006, p. 631, § 1/SB 381; Ga. L. 2007, p. 47, § 50/SB 103.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-12, as enacted by Ga. L. 2006, p. 631, § 1, was redesignated as Code Section 50-3-13. Another Code Section 50-3-12 was enacted by Ga. L. 2006, p. 214, § 1.

Editor's notes. — Ga. L. 2006, p. 631, § 2/SB 381, not codified by the General Assembly, provides that this Code section shall apply to the death of a qualifying public safety officer occurring on or after January 1, 2006.

ARTICLE 2

GREAT SEAL OF THE STATE

50-3-30. Description; custody.

(a) The Secretary of State shall keep the great seal of the state adopted August 17, 1914, and on deposit in the office of the Secretary of State. The seal shall be either of silver or of some harder and more durable metal or composition of metals, 2 1/4 inches in diameter.

(b) The device on one side is a view of the seashore, with a ship bearing the flag of the United States riding at anchor near a wharf, receiving on board hogsheads of tobacco and bales of cotton, emblematic of the exports of this state; at a small distance a boat, landing from the interior of the state, with hogsheads, etc., on board, representing the state's internal traffic; in the back part of the same side a man in the act of plowing; and at a small distance a flock of sheep in different postures, shaded by a flourishing tree. The motto inscribed thereon is "Agriculture and Commerce, 1776."

(c) The device on the other side is three pillars supporting an arch, with the word "Constitution" engraved within the same, emblematic of the Constitution, supported by the three departments of government, namely the legislative, judicial, and executive. The first pillar has engraved upon a scroll "Wisdom," the second, "Justice," the third, "Moderation"; between the second and third pillars a man stands with a drawn sword, representing the aid of the military in the defense of the

Constitution, and the motto is "State of Georgia, 1776." (Laws 1799, Cobb's 1851 Digest, p. 959; Code 1863, § 86; Code 1868, § 81; Code 1873, § 86; Code 1882, § 86; Civil Code 1895, § 184; Civil Code 1910, § 213; Ga. L. 1914, p. 1247; Code 1933, § 40-701; Ga. L. 2001, p. 1, § 3.)

Cross references. — Duty of Secretary of State to keep great seal of state, § 45-13-20(1).

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 305 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 65.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, §§ 79, 244.

50-3-31. Use and display; facsimile.

In addition to official documents which require that the great seal be affixed, the Governor may authorize the use and display of the great seal or a facsimile of the state emblem under such conditions as he may impose when there shall be demonstrated to his satisfaction that the intended use or display thereof is appropriate and legitimate and is not contrary to the state's interest in preserving the sanctity and dignity of the state seal and emblem and that the use or display will not otherwise violate Code Section 50-3-8 or 50-3-9. (Ga. L. 1979, p. 411, § 1.)

Cross references. — Display of great seal of state on state-owned motor pool vehicles, § 50-19-2.

OPINIONS OF THE ATTORNEY GENERAL

Use of seal prohibited. — Great seal of Georgia may not be used upon the cover of a textbook privately published and of-

fered for sale. 1954-56 Op. Att'y Gen. p. 638.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, § 3 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 65.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, § 79.

50-3-32. Authorized and unauthorized use or display.

(a) As used in this Code section, the term "election" means any primary election; run-off election, either primary or general; special election; general election; or recall election.

(b) Every constitutional officer; every official elected state wide; the executive head of every state department or agency, whether elected or

appointed; each member of the General Assembly; and the executive director of each state authority shall be authorized to use or display the great seal or a facsimile of the state emblem for official state purposes and, in addition, each of the officials enumerated in this subsection who are elected officials shall be authorized to use or display the great seal or a facsimile of the state emblem on or in connection with any campaign poster, sign, or advertisement for election to any public office.

(c) Except as otherwise authorized by Code Section 50-3-31 or subsection (b) of this Code section, it shall be unlawful for any person, firm, corporation, or campaign committee to use or display the great seal or a facsimile of the state emblem on or in connection with any campaign poster, sign, or advertisement for election to any public office in such a manner as to falsely suggest or imply that the person on whose behalf the same is used is at the time a holder of a public office for which a commission bearing said seal is used.

(d) Any person who violates any provision of subsection (c) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 50-3-32, enacted by Ga. L. 1989, p. 1122, § 1.)

ARTICLE 3

OTHER STATE SYMBOLS

Editor's notes. — By resolution (Ga. L. 1984, p. 475), the General Assembly designated the Botanical Garden at the University of Georgia as the State Botanical Garden of Georgia.

By resolution (Ga. L. 1985, p. 562), the

General Assembly designated *The Atlas of Georgia* the official state atlas of Georgia.

By resolution (Ga. L. 1985, p. 747), the General Assembly designated the right whale as the official Georgia state marine mammal.

50-3-50. State bird.

The brown thrasher is designated as the official Georgia state bird. (Ga. L. 1970, p. 418.)

50-3-51. State game bird.

The bobwhite quail is designated as the official Georgia state game bird. (Ga. L. 1970, p. 418.)

50-3-52. State fish.

The largemouth bass is designated as the official Georgia state fish. (Ga. L. 1970, p. 846.)

50-3-53. State floral emblem.

The Cherokee rose is adopted as the floral emblem of the State of Georgia. (Ga. L. 1916, p. 1046.)

50-3-54. State wild flower.

The native azaleas (*Rhododendron sp.*), collectively, are designated as the Georgia state wild flower. (Ga. L. 1979, p. 1387; Ga. L. 2013, p. 1042, § 5/HB 338.)

The 2013 amendment, effective July 1, 2013, substituted “native azaleas (*Rhododendron sp.*), collectively, are designated” for “azalea is designated” in this Code section.

50-3-55. Official tree.

The live oak is adopted as the official tree emblematic of the State of Georgia. (Ga. L. 1937, p. 2209.)

50-3-56. Official fossil.

The shark tooth is designated as the official Georgia state fossil. (Ga. L. 1976, p. 567.)

50-3-57. Official gem.

Quartz is designated as the official Georgia state gem. (Ga. L. 1976, p. 567.)

50-3-58. Official insect.

The honeybee is designated as the official Georgia state insect. (Ga. L. 1975, p. 927.)

50-3-59. Official mineral.

Staurolite is designated as the official Georgia state mineral. (Ga. L. 1976, p. 567.)

50-3-60. Official song.

The song “Georgia on My Mind” with lyrics by Mr. Stuart Gorrell and music by Mr. Hoagy Carmichael is designated as the official song of the State of Georgia.

Georgia on My Mind

Melodies bring memories
That linger in my heart
Make me think of Georgia
Why did we ever part?
Some sweet day when blossoms fall
And all the world's a song
I'll go back to Georgia
'Cause that's where I belong.
Georgia, Georgia, the whole day through
Just an old sweet song keeps Georgia on my mind.
Georgia, Georgia, a song of you
Comes as sweet and clear as moonlight through the pines.
Other arms reach out to me
Other eyes smile tenderly
Still in peaceful dreams I see
The road leads back to you.
Georgia, Georgia, no peace I find
Just an old sweet song keeps Georgia on my mind.

Use by State of Georgia governed by 1979 agreement with Peer International Corporation. Copyright 1930 by Peer International Corporation. Copyright renewed. Used by permission. (Ga. L. 1979, p. 1425.)

50-3-61. Official waltz.

The song "Our Georgia" is adopted as the official waltz of the State of Georgia. (Ga. L. 1951, p. 842.)

50-3-62. Official butterfly.

The tiger swallowtail is designated as the official Georgia state butterfly. (Code 1981, § 50-3-62, enacted by Ga. L. 1988, p. 853, § 1.)

50-3-63. Official reptile.

The gopher tortoise is designated as the official Georgia state reptile. (Code 1981, § 50-3-63, enacted by Ga. L. 1989, p. 297, § 1.)

50-3-64. Official historic drama.

(a) The drama, *The Reach of Song*, is designated as the official historic drama of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work

together to maximize advertising programs which permit citizens of other states and nations to learn of the historic drama and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-64, enacted by Ga. L. 1990, p. 157, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2004, p. 690, § 24.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, Code Section 50-3-64, as enacted by Ga. L. 1990, p. 1131, § 1, was redesignated as Code Section 50-3-65.

50-3-65. Official vegetable.

The Vidalia Sweet Onion is designated as the official Georgia state vegetable. (Code 1981, § 50-3-65, enacted by Ga. L. 1990, p. 1131, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, Code Section 50-3-64, as enacted by Ga. L. 1990, p. 1131, § 1, was redesignated as Code Section 50-3-65.

50-3-66. State theater.

The Springer Opera House is designated as the official Georgia state theater. (Code 1981, § 50-3-66, enacted by Ga. L. 1992, p. 1633, § 1.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-67. Official state folk festival.

The Georgia Folk Festival is designated as the official Georgia state folk festival. (Code 1981, § 50-3-67, enacted by Ga. L. 1992, p. 2363, § 1.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L. 1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-68. Official 'Possum.

Pogo 'Possum, created by Walt Kelly, is adopted as the official Georgia State 'Possum. (Code 1981, § 50-3-68, enacted by Ga. L. 1992, p. 2391, § 9.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant

to Code Section 28-9-5, the Code section enacted by Ga. L. 1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-69. Official musical theatre.

(a) The “Peach State Summer Theatre” is designated as the official musical theatre of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Peach State Summer Theatre and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-69, enacted by Ga. L. 1993, p. 934, § 1; Ga. L. 2004, p. 690, § 25; Ga. L. 2006, p. 437, § 2/HB 343.)

Editor’s notes. — Ga. L. 1993, p. 934, § 2, not codified by the General Assembly, provides: “The Jekyll Island Authority and the University System of Georgia are commended for the exemplary cooperative efforts in creating the Jekyll Island Musical Theatre Festival, and they are encouraged to continue to support and develop this excellent program.”

Ga. L. 2006, p. 437, § 1/HB 343, not codified by the General Assembly, provides: “WHEREAS, the partnership between Valdosta State University and the Jekyll Island Authority to produce the Jekyll Island Musical Theatre has been dissolved and Valdosta State University has moved its summer theatre program to the Valdosta State University campus as the Peach State Summer Theatre; and

“WHEREAS, the State of Georgia has recognized the importance of tourism to the economic and cultural well-being of its people through the establishment of the Department of Economic Development; and

“WHEREAS, the enhancement of tourist attractions in Georgia, which would encourage tourists to extend their stay in Georgia, benefits the state; and

“WHEREAS, many groups in the state are working to improve the quality of artistic and recreational experiences for Georgia residents and for out-of-state tourists as well; and

“WHEREAS, the existence of musical theatre is a vital component of the artistic and cultural life of Georgia; and Georgia is committed to encourage and support artists’ activities of the highest quality for the enjoyment and enrichment of the citizens; and

“WHEREAS, Valdosta State University, a unit of the University System of Georgia, has received a Regents’ Award for Excellence in the Theatre and has a 15 year history of producing the Jekyll Island Musical Theatre Festival, a professional repertory musical theatre company; and

“WHEREAS, Valdosta State University is moving its summer theatre to Valdosta, Georgia, and will continue to present musical theatre of outstanding artistry to residents and tourists; and

“WHEREAS, that summer theatre is named the Peach State Summer Theatre in celebration of the State of Georgia.”

50-3-70. Official state fruit.

The peach is designated as the official Georgia state fruit. (Code 1981, § 50-3-70, enacted by Ga. L. 1995, p. 362, § 1.)

50-3-71. Poultry Capital of the World.

The State of Georgia is designated as the Poultry Capital of the World. (Code 1981, § 50-3-71, enacted by Ga. L. 1995, p. 365, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1995, p. 365, was redesignated as Code Section 50-3-71, since Code Section 50-3-70 had already been enacted by Ga. L. 1995, p. 362.

50-3-72. State crop; official state peanut monument.

(a) The peanut is designated as the official Georgia state crop.

(b) The peanut monument located in Turner County on the west side of Interstate Highway 75 within the limits of the City of Ashburn is designated the official state peanut monument. (Code 1981, § 50-3-72, enacted by Ga. L. 1995, p. 934, § 1; Ga. L. 1998, p. 588, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1995, p. 934, was redesignated as Code Section 50-3-72, since Code Section 50-3-70 had already been enacted by Ga. L. 1995, p. 362 and Ga. L. 1995, p. 365, the latter of which enactments was redesignated as Code Section 50-3-71.

50-3-73. Official folk dance.

Square dancing is designated as the official Georgia folk dance. (Code 1981, § 50-3-73, enacted by Ga. L. 1996, p. 662, § 1.)

50-3-74. Official railroad museum.

(a) The Central of Georgia Railroad Shops Complex in Savannah, Georgia, is designated as the official railroad museum of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Central of Georgia Railroad Shops Complex and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-74, enacted by Ga. L. 1996, p. 801, § 1; Ga. L. 2004, p. 690, § 26.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1996, p. 801, § 1, was redesignated as Code Section 50-3-74, since a Code Section 50-3-70 already existed.

50-3-75. Official beef barbecue championship cookoff; official pork barbecue championship cookoff.

(a) The Hawkinsville Civitan Club's "Shoot the Bull" barbecue championship is designated as the official state beef barbecue championship cookoff.

(b) The Dooly County Chamber of Commerce's "Slosheye Trail Big Pig Jig" is designated as the official state pork barbecue championship cookoff. (Code 1981, § 50-3-75, enacted by Ga. L. 1997, p. 588, § 1.)

50-3-76. Official tartan.

(a) The Georgia tartan is designated as the official tartan of Georgia.

(b) The Georgia tartan is that tartan accredited in Certificate Number 96027 by the Council of the Scottish Tartans Society of Scotland and is described as follows: 72 green, 4 black, 4 green, 4 black, 6 green, 24 black, 20 azure, 40 red. (Code 1981, § 50-3-76, enacted by Ga. L. 1997, p. 1557, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 50-3-75, was redesignated as Code Section 50-3-76.

50-3-77. Official state transportation history museum designated; maximization of advertising programs.

(a) The Southeastern Railway Museum in Duluth, Georgia, is designated as the official state transportation history museum.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Southeastern Railway Museum and to visit this state for tourism purposes. (Code 1981, § 50-3-77, enacted by Ga. L. 2000, p. 766, § 1; Ga. L. 2004, p. 690, § 27.)

Cross references. — Railroad companies, T. 46, C. 8.

50-3-78. State official prepared food.

Grits are recognized as the official prepared food of the State of Georgia. (Code 1981, § 50-3-78, enacted by Ga. L. 2002, p. 453, § 2.)

50-3-79. Official center for character education.

The Mighty Eighth Air Force Heritage Museum is designated as an official State of Georgia center for character education. (Code 1981, § 50-3-79, enacted by Ga. L. 2003, p. 501, § 1.)

Editor's notes. — Ga. L. 2004, p. 156, § 1, which enacted new Code Section 50-3-79 which was identical to Code Section 50-3-80, was treated as having reenacted Code Section 50-3-80.

Cross references. — Comprehensive character education program, § 20-2-145.

50-3-80. Official Frontier and Southeastern Indian Interpretive Center.

The Funk Heritage/Bennett Center at Reinhardt College in Waleska, Georgia, is designated as Georgia's official Frontier and Southeastern Indian Interpretive Center. (Code 1981, § 50-3-80, enacted by Ga. L. 2003, p. 501, § 1; Ga. L. 2004, p. 156, § 1.)

Editor's notes. — Ga. L. 2004, p. 156, § 1, which enacted a new Code Section 50-3-79 which was identical to this Code

section, was treated as having reenacted this Code section.

50-3-81. Official amphibian.

The green tree frog is designated as the official Georgia state amphibian. (Code 1981, § 50-3-81, enacted by Ga. L. 2005, p. 316, § 2/SB 41.)

Editor's notes. — Ga. L. 2005, p. 316, § 1/SB 41, not codified by the General Assembly, provides that: "The General Assembly finds and determines that:

"(1) The green tree frog's (*hyla cinerea*) habitat includes nearly all of Georgia, so virtually all Georgians are familiar with it or have a great opportunity to see its conspicuous bright color and striped markings;

"(2) Large aggregations of calling males create conspicuous and characteristic nighttime choruses during the warm months;

"(3) All other major groups of wildlife, including mammals, birds, reptiles, fish, insects, trees, and wildflowers, are represented by state symbols, and amphibians are a crucial link in the state's ecosystem;

"(4) Official recognition of a state amphibian could help correct the false im-

pression that amphibians and reptiles are one and the same;

"(5) The State of Georgia is home to 85 different species of amphibians, which gives it the distinction of having the second greatest amphibian diversity of any state in the United States behind North Carolina;

"(6) Well-publicized world-wide decline of amphibians has become a major conservation concern and the exclusion of amphibians from our official state symbols list could possibly contribute to a sense of complacency towards this loss of biota;

"(7) Amphibians are excellent indicators of water and air quality due to their porous skin and habit of moving between aquatic and terrestrial habitats, and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in localized areas; and

“(8) Establishing an official state amphibian is necessary to fully recognize our diverse wildlife and the green tree frog is

deserving of the attention and appreciation of the citizens of this state by designation as the official state amphibian.”

50-3-82. Official cold water game fish.

The Southern Appalachian brook trout is designated as the official Georgia cold water game fish. (Code 1981, § 50-3-82, enacted by Ga. L. 2006, p. 678, § 2/HB 1211.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-82, as enacted by Ga. L. 2006, p. 823, § 1, was redesignated as Code Section 50-3-84. Code Sections 50-3-82 and 50-3-83 were enacted by Ga. L. 2006, p. 678, §§ 2, 3.

Editor’s notes. — Ga. L. 2006, p. 678, § 1/HB 1211, not codified by the General Assembly, provides that: “(a) The General Assembly finds and determines that:

“(1) The Southern Appalachian brook trout is one of nature’s most exquisite forms of art with its brilliant colors and intricate patterns;

“(2) The Southern Appalachian brook trout makes its home in the clean, cold, crystal clear waters of the North Georgia mountains and is Georgia’s only native Salmonid species;

“(3) Throughout our state’s history, our citizens have prized the Southern Appalachian brook trout for its tasty flesh and plentiful numbers;

“(4) Over the past century, however, extensive logging has decimated brook trout waters through sedimentation and erosion of habitat and, when nonnative trout were stocked to replace lost populations, the brook trout could not compete and were driven to higher elevation streams where they remain today;

“(5) The brook trout is also subject to harm today from acid rain that is deposited in the high mountains and ridges of our state from air pollution;

“(6) The protection of the Southern Appalachian brook trout has become a major conservation concern and the inclusion of the Southern Appalachian brook trout in our official state symbols list could possibly contribute to the efforts to protect this magnificent state natural resource;

“(7) The Southern Appalachian brook

trout is an excellent indicator of water and air quality and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in our watersheds; and

“(8) Establishing an official state cold water game fish is necessary to fully recognize our diverse wildlife and the Southern Appalachian brook trout is deserving of the attention and appreciation of the citizens of this state by designation as the official state cold water fish.

“(b) The General Assembly further finds and declares as follows:

“(1) The red drum, also known as redfish, spottail bass, and channel bass, is highly prized by Georgia’s citizens as a worthy adversary on the end of a fishing line and an epicurean delight on the table;

“(2) A visually stunning specimen of marine life, the red drum varies in color from a pale pink to a deep bronze. The false-eye spot found near the tail is a unique characteristic as is the powder blue markings on the fringe of the tail;

“(3) The red drum is found from the smallest tidal creek to the crashing surf on lonely barrier islands to the depths of the Atlantic Ocean and thus is symbolic of the link between the diversity of habitats found along Georgia’s coast;

“(4) A long-lived species, red drum are known to reach an age in excess of 50 years. A single female may produce billions of eggs over a lifetime;

“(5) Prior to the mid-1980’s, Georgia’s red drum population was in jeopardy from the over harvesting of immature fish and adults;

“(6) State biologists and concerned anglers saw the need for conservation of this magnificent species and advocated for the first harvest regulations implemented by the General Assembly in 1986;

“(7) Year in and year out, red drum rank among the top three species caught and kept by Georgia salt-water anglers. Georgia’s human population continues to increase and the number of salt-water anglers seeking red drum increase along with it;

“(8) Because of the red drum’s importance to Georgia anglers, the landmark Peach State Reds Initiative will investigate the feasibility of using hatchery reared red drum as a fishery management tool while providing additional much needed science based information;

“(9) A survey of the Coastal Conservation Association of Georgia’s membership revealed that nearly 50 percent were in favor of the red drum becoming Georgia’s state salt-water fish; and

“(10) Establishing an official state salt-water fish is necessary to fully recognize the importance of our coastal fisheries to our state, and the red drum is deserving of the attention and appreciation of the citizens of this state by designation as the official state salt-water fish.”

50-3-83. Official salt-water fish.

The red drum is designated as the official Georgia salt-water fish. (Code 1981, § 50-3-83, enacted by Ga. L. 2006, p. 678, § 3/HB 1211.)

Editor’s notes. — Ga. L. 2006, p. 678, § 1/HB 1211, not codified by the General Assembly, provides that: “(a) The General Assembly finds and determines that:

“(1) The Southern Appalachian brook trout is one of nature’s most exquisite forms of art with its brilliant colors and intricate patterns;

“(2) The Southern Appalachian brook trout makes its home in the clean, cold, crystal clear waters of the North Georgia mountains and is Georgia’s only native Salmonid species;

“(3) Throughout our state’s history, our citizens have prized the Southern Appalachian brook trout for its tasty flesh and plentiful numbers;

“(4) Over the past century, however, extensive logging has decimated brook trout waters through sedimentation and erosion of habitat and, when nonnative trout were stocked to replace lost populations, the brook trout could not compete and were driven to higher elevation streams where they remain today;

“(5) The brook trout is also subject to harm today from acid rain that is deposited in the high mountains and ridges of our state from air pollution;

“(6) The protection of the Southern Appalachian brook trout has become a major conservation concern and the inclusion of the Southern Appalachian brook trout in our official state symbols list could possi-

bly contribute to the efforts to protect this magnificent state natural resource;

“(7) The Southern Appalachian brook trout is an excellent indicator of water and air quality and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in our watersheds; and

“(8) Establishing an official state cold water game fish is necessary to fully recognize our diverse wildlife and the Southern Appalachian brook trout is deserving of the attention and appreciation of the citizens of this state by designation as the official state cold water fish.

“(b) The General Assembly further finds and declares as follows:

“(1) The red drum, also known as redfish, spottail bass, and channel bass, is highly prized by Georgia’s citizens as a worthy adversary on the end of a fishing line and an epicurean delight on the table;

“(2) A visually stunning specimen of marine life, the red drum varies in color from a pale pink to a deep bronze. The false-eye spot found near the tail is a unique characteristic as is the powder blue markings on the fringe of the tail;

“(3) The red drum is found from the smallest tidal creek to the crashing surf on lonely barrier islands to the depths of the Atlantic Ocean and thus is symbolic of the link between the diversity of habitats found along Georgia’s coast;

“(4) A long-lived species, red drum are known to reach an age in excess of 50 years. A single female may produce billions of eggs over a lifetime;

“(5) Prior to the mid-1980’s, Georgia’s red drum population was in jeopardy from the over harvesting of immature fish and adults;

“(6) State biologists and concerned anglers saw the need for conservation of this magnificent species and advocated for the first harvest regulations implemented by the General Assembly in 1986;

“(7) Year in and year out, red drum rank among the top three species caught and kept by Georgia salt-water anglers. Georgia’s human population continues to increase and the number of salt-water anglers seeking red drum increase along with it;

“(8) Because of the red drum’s importance to Georgia anglers, the landmark Peach State Reds Initiative will investigate the feasibility of using hatchery reared red drum as a fishery management tool while providing additional much needed science based information;

“(9) A survey of the Coastal Conservation Association of Georgia’s membership revealed that nearly 50 percent were in favor of the red drum becoming Georgia’s state salt-water fish; and

“(10) Establishing an official state salt-water fish is necessary to fully recognize the importance of our coastal fisheries to our state, and the red drum is deserving of the attention and appreciation of the citizens of this state by designation as the official state salt-water fish.”

50-3-84. Official designation of First Mural City.

(a) The City of Colquitt is designated as Georgia’s First Mural City.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of Georgia’s First Mural City and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-84, enacted by Ga. L. 2006, p. 823, § 1/SB 484.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-82, as enacted by Ga. L. 2006, p. 823, § 1, was redesignated as

Code Section 50-3-84. Code Sections 50-3-82 and 50-3-83 were enacted by Ga. L. 2006, p. 678, §§ 2, 3.

50-3-85. Official Georgia historical civil rights museum.

The Ralph Mark Gilbert Civil Rights Museum is designated an official Georgia historical civil rights museum. (Code 1981, § 50-3-85, enacted by Ga. L. 2009, p. 207, § 3/SB 27.)

Editor’s notes. — Ga. L. 2009, p. 207, § 1/SB 27, not codified by the General Assembly, provides that: “WHEREAS, the Ralph Mark Gilbert Civil Rights Museum, recently named ‘Georgia’s Best New History Museum’ by the Georgia Journal, is named in honor of the late Dr. Ralph Mark Gilbert. The father of Savannah’s modern day Civil Rights Movement and fearless National Association for the Advancement

of Colored People (NAACP) leader was known for much more than his outspoken campaigns for civil rights. He was a nationally known orator, pulpiter, and playwright, producing religious dramas, known as passion plays, throughout the country; and

“WHEREAS, Dr. Gilbert served as pastor of historic First African Baptist Church on Franklin Square in Savannah

for 16 years. In 1942, he reorganized the Savannah Branch NAACP, served as president for eight years and convened the first state conference. Branches from Savannah, Brunswick, Dublin, Atlanta, Columbus, Macon, Albany and three other branches whose identities are uncertain, attended and elected Rev. Ralph Mark Gilbert president. Under his courageous leadership, more than forty NAACP branches were organized in Georgia by 1950; and

“WHEREAS, Georgia’s best new history museum chronicles the civil rights struggle of Georgia’s oldest African American community from slavery to the present.

Three floors of handsome photographic and interactive exhibits, includes an NAACP Organization exhibit, a fiber optic map of 87 significant civil rights sites/events, a lunch counter where ‘sit ins’ occurred, segregation exhibits, and video presentation are all part of the continuous education of the public on the history of the civil rights struggle in Savannah and Georgia. The museum is located in historic Savannah in a five level building that was erected in 1914 as the Wage Earners Savings and Loan Bank for Black Savannahians, the largest Black bank in the country at that time.”

ARTICLE 4

OFFICIAL STATE LANGUAGE

50-3-100. English designated as official language; constitutional rights not denied; authorization for documents and forms in other languages; exceptions.

(a) The English language is designated as the official language of the State of Georgia. The official language shall be the language used for each public record, as defined in Code Section 50-18-70, and each public meeting, as defined in Code Section 50-14-1, and for official Acts of the State of Georgia, including those governmental documents, records, meetings, actions, or policies which are enforceable with the full weight and authority of the State of Georgia.

(b) This Code section shall not be construed in any way to deny a person’s rights under the Constitution of Georgia or the Constitution of the United States or any laws, statutes, or regulations of the United States or of the State of Georgia as a result of that person’s inability to communicate in the official language.

(c) State agencies, counties, municipal corporations, and political subdivisions of this state are authorized to use or to print official documents and forms in languages other than the official language, at the discretion of their governing authorities. Documents filed or recorded with a state agency or with the clerk of a county, municipal corporation, or political subdivision must be in the official language or, if the original document is in a language other than the official language, an English translation of the document must be simultaneously filed.

(d) The provisions of subsection (a) of this Code section shall not apply:

- (1) When in conflict with federal law;
- (2) When the public safety, health, or justice requires the use of other languages;
- (3) To instruction designed to teach the speaking, reading, or writing of foreign languages;
- (4) To instruction designed to aid students with limited English proficiency in their transition and integration into the education system of the state; and
- (5) To the promotion of international commerce, tourism, sporting events, or cultural events. (Code 1981, § 50-3-100, enacted by Ga. L. 1996, p. 1631, § 1; Ga. L. 2002, p. 415, § 50.)

Cross references. — Program for limited-English-proficient students, § 20-2-156. English version of insurance policy controls, § 33-1-22. Municipalities prohibited from restricting the use of language other than English on signs for privately owned businesses, § 36-35-6.1. Examinations to be conducted in English, § 43-34-26.

Editor’s notes. — By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

Law reviews. — For review of 1996 state government legislation, see 13 Ga. U.L. Rev. 320 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Resolution (Ga. L. 1986, p. 529) adopting English as the official language of the State of Georgia has the

force and effect of law. 1995 Op. Att’y Gen. No. U95-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Consumer and Borrower Protection, § 16.

C.J.S. — 3A C.J.S., Aliens, § 1788.

CHAPTER 4

ORGANIZATION OF EXECUTIVE BRANCH GENERALLY

Sec.		Sec.	
50-4-1.	Definitions.	50-4-5.	Contract by executive branch unit for privatization; notice.
50-4-2.	Internal structure of departments.	50-4-6.	Contract between state agency and private provider for operation of institution under control of agency; feasibility study.
50-4-3.	Assignment for administrative purposes only; authorities to retain separate identities.	50-4-7.	State service delivery regions.
50-4-4.	Advisory councils.		

50-4-1. Definitions.

Unless otherwise required by context, as used in this Code when related to the executive branch of state government, the term:

(1) “Administrative” means those functions related to the specific implementation of general policies.

(2) “Agency” means any officer, department, division, bureau, board, commission, or agency in the executive branch of state government.

(3) “Constitution” means the Constitution of Georgia.

(4) “Department” means a principal, functional, and administrative entity and its divisions within the executive branch of state government provided for by the “Executive Reorganization Act of 1972” or by any subsequent enactment except when used in connection with the name of an agency existing before July 1, 1972.

(5) “Department head” means a director, commission, board, commissioner, or constitutional officer or such other official in charge of a department.

(6) “Function” means a duty, power, or program exercised by or assigned to an agency, whether or not specifically provided for by law, including budgeted positions and personnel relating to the performance of such function unless otherwise provided.

(7) “Policy” or “policy making” means those functions related to establishing the general direction which programs of an agency shall take.

(8) “Unit” means an internal subdivision of an agency, created by statute or by administrative action, including a division, bureau, section, or department or an agency assigned to a department for administrative purposes only as provided in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 1C; Ga. L. 1983, p. 3, § 66.)

JUDICIAL DECISIONS

Cited in Bliss v. Cobb County, 599 F. Hawthorne, 269 Ga. 9, 494 S.E.2d 656 Supp. 233 (N.D. Ga. 1984); Phillips v. (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Am. Jur. 2d, States, Territories, and De-
Officers and Employees, § 1 et seq. 72 pendencies, §§ 1, 64.

50-4-2. Internal structure of departments.

For its internal structure, each department shall adhere to the following standard terms:

(1) The principal unit of a department is a division. Each division shall be headed by a director or deputy, except as otherwise provided; and

(2) The principal unit of a division is a section. Each section shall be headed by a supervisor. (Ga. L. 1972, p. 1015, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public **C.J.S.** — 73 C.J.S., Public Administra-
Officers and Employees, §§ 1, 7. 72 Am. tive Law and Procedure, § 30 et seq. 81A
Jur. 2d, States, Territories, and Depen- C.J.S., States, §§ 73, 74, 157 et seq.
dencies, § 64.

50-4-3. Assignment for administrative purposes only; authorities to retain separate identities.

(a) An agency assigned to a department for administrative purposes only shall:

(1) Exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department;

(2) Prepare its budget, if any, and submit its budgetary requests, if any, through the department; and

(3) Hire its own personnel if authorized by the Constitution of this state or by statute or if the General Assembly provides or authorizes the expenditure of funds therefor.

(b) The department to which an agency is assigned for administrative purposes only shall:

(1) Provide record keeping, reporting, and related administrative and clerical functions for the agency;

(2) Disseminate for the agency required notices, rules, or orders adopted, amended, or repealed by the agency;

(3) Provide staff for the agency subject to paragraph (3) of subsection (a) of this Code section; and

(4) Include in the departmental budget the agency's budgetary request, if any, as a separate part of the budget and exactly as prepared and submitted to the department by the agency.

(c) Whenever any authority is assigned for administrative purposes, it means only that the state department through which the authority deals with the state shall be that department to which the authority is assigned. Any authority created by state law shall retain its separate identity as an instrumentality of the state and a public corporation. The department to which an authority is assigned is authorized, only with the approval of the authority, to perform for such authority any or all of the functions set forth in subsection (b) of this Code section. (Ga. L. 1972, p. 1015, § 3.)

JUDICIAL DECISIONS

Cited in *Fouche v. Jekyll Island-State Park Auth.*, 713 F.2d 1518 (11th Cir. 1983); *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984).

OPINIONS OF THE ATTORNEY GENERAL

Hiring and discharging employees. — State Board of Pardons and Paroles may hire and discharge employees required in performance of the board's quasi-judicial functions. 1975 Op. Att'y Gen. No. 75-35.

Department of Corrections without authority to assign staff to board. — Since the State Board of Pardons and Paroles has statutory authority to hire the board's own personnel to assist the board in carrying out the board's quasi-judicial functions, the Department of Offender Rehabilitation (now Corrections) is not authorized to assign staff to the State Board of Pardons and Paroles as pre-parole investigators. 1975 Op. Att'y Gen. No. 75-35.

Staff to be provided to Children's Trust Fund Commission. — Department of Human Resources is authorized to provide staff and existing departmental resources to the State Children's Trust Fund Commission whenever practicable. When it is not practicable for the department or other participating departments to provide staff or resources, then the

commission, with the approval of the Governor, is authorized to employ and discharge the commission's own personnel. 1990 Op. Att'y Gen. No. 90-35.

Transfer of advisory council on vocational education by Governor. — Governor may not transfer advisory council on vocational education from Department of Education for fiscal and administrative purposes to the Office of Planning and Budget. 1974 Op. Att'y Gen. No. U74-61.

Altering fiscal agent for advisory council. — Function of fiscal agent for the advisory council on vocational education is a responsibility accruing to the Department of Education and alterable only by action of the General Assembly. 1974 Op. Att'y Gen. No. U74-61.

Preparation of affirmative action programs. — Department of Public Safety is not responsible for preparing affirmative action programs for agencies assigned to the department for administrative purposes only. The essence of assignment is to benefit the assigned agency,

which is normally smaller than the agency to which it is assigned. The assigned agency gets the benefit of the larger agency's financial and administra-

tive staff, but does not lose any of the agency's independent authority or control with regard to carrying out the agency's duties. 1980 Op. Att'y Gen. No. 80-147.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 64.

C.J.S. — 73 C.J.S., Public Administra-

tive Law and Procedure, § 10 et seq. 81A C.J.S., States, §§ 73, 74, 157 et seq.

50-4-4. Advisory councils.

A department head or the Governor may create advisory councils. Any other official or agency of the executive branch of state government may also create advisory councils but only if federal laws or regulations require that the official or agency create the advisory council as a condition to the receipt of federal funds. Advisory councils may be created only for the purpose of acting in an advisory capacity. Unless otherwise provided by law, any such advisory council shall have a definite termination date in the instrument creating it, such date not to extend beyond the term of the Governor holding office at the time of the creation of the council. (Ga. L. 1972, p. 1015, § 28.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 42 et seq., 139, 144, 230 et seq., 241. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 22.

C.J.S. — 73 C.J.S., Public Administra-

tive Law and Procedure, §§ 10 et seq., 32 et seq. 81A C.J.S., States, §§ 73, 74, 145 et seq., 254 et seq.

73A C.J.S., Public Administrative Law and Procedure, § 295 et seq.

50-4-5. Contract by executive branch unit for privatization; notice.

(a) As used in this Code section, the term:

(1) "Institution" means any physical facility operated by the executive branch of state government which is used in the delivery of any governmental services and which has an annual operating budget in excess of \$1 million.

(2) "Program" means any program operated by the executive branch of state government at a cost in excess of \$5 million per year.

(b) Before any department, agency, authority, or other unit of the executive branch enters into any contract to privatize the operation of any institution or program, the department, agency, authority, or other unit shall give written notice of the proposed privatization to the President of the Senate, the Speaker of the House, and the appropriate

legislative overview committee, if any. Such notice shall be given at least 60 days prior to entering into the contract to privatize the operation of the institution or program.

(c) This Code section shall not apply with respect to any privatization effort begun prior to July 1, 1997, or to the renewal of any contract or agreement for the privatization of an institution or program. (Code 1981, § 50-4-5, enacted by Ga. L. 1997, p. 691, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “July 1, 1997,” was substituted for “the effective date of this Code section” in subsection (c).

RESEARCH REFERENCES

ALR. — Privatization of governmental services by state or local governmental agency, 65 ALR5th 1.

50-4-6. Contract between state agency and private provider for operation of institution under control of agency; feasibility study.

(a) As used in this Code section, the term “institution” means any physical facility operated by the executive branch of state government which is used in the delivery of any governmental services and which has an annual operating budget in excess of \$1 million.

(b) No contract between a state agency and a private provider or vendor for the operation of all or part of an institution under the control of the agency shall be entered into unless it is preceded by a feasibility study which makes the following findings:

(1) That the state employees who are employed in the operation of the institution prior to the transfer of operation to the private provider or vendor will have a reasonable opportunity to apply for continued employment either with the state or with the private provider or vendor; or

(2) That any state employees who are displaced or discharged from employment as a result of the transfer of operation to the private provider or vendor will be eligible for participation in an employment assistance program to be implemented by the state and coordinated by the Department of Labor and which shall be designed to assist such persons in securing other employment. The program shall include such educational programs, vocational skills programs, apprenticeship training programs, on-the-job training programs, job search and job development programs, and other occupational training or retraining programs as are determined by the Department of Labor to best promote the goals of employability and employment of

such persons. (Code 1981, § 50-4-6, enacted by Ga. L. 1997, p. 1542, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 50-4-5, was redesignated as Code Section 50-4-6.

50-4-7. State service delivery regions.

(a) For the purpose of delivering state services to local units of government and citizens and for the purpose of establishing state agency regional boundaries, there are created 12 state service delivery regions as follows:

(1) State Service Delivery Region 1 shall be composed of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield counties;

(2) State Service Delivery Region 2 shall be composed of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White counties;

(3) State Service Delivery Region 3 shall be composed of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale counties;

(4) State Service Delivery Region 4 shall be composed of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson counties;

(5) State Service Delivery Region 5 shall be composed of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton counties;

(6) State Service Delivery Region 6 shall be composed of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson counties;

(7) State Service Delivery Region 7 shall be composed of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes counties;

(8) State Service Delivery Region 8 shall be composed of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster counties;

(9) State Service Delivery Region 9 shall be composed of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox counties;

(10) State Service Delivery Region 10 shall be composed of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth counties;

(11) State Service Delivery Region 11 shall be composed of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton, Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware counties; and

(12) State Service Delivery Region 12 shall be composed of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven counties.

(b) This Code section shall not apply to or affect aging program planning and service areas, health districts, or mental health districts. (Code 1981, § 50-4-7, enacted by Ga. L. 1998, p. 1230, § 1; Ga. L. 1999, p. 789, § 3; Ga. L. 2005, p. 143, § 1/SB 144; Ga. L. 2010, p. 451, § 1/HB 1260.)

Code Commission notes. — Pursuant “McIntosh” was substituted for to Code Section 28-9-5, in 2009, “Mcintosh” in paragraph (a)(12).

CHAPTER 5

DEPARTMENT OF ADMINISTRATIVE SERVICES

Article 1

General Provisions

Sec.

- Sec.
50-5-1. Department created; commissioner appointed.
50-5-2 through 50-5-11 [Repealed].
50-5-12. Formulation of self-insurance program for workers' compensation for state employees; return to work program.
50-5-13. Extent, premiums, deductibles, benefit amounts, reserves, and excess coverage for self-insurance program; incentive programs authorized; deduction of unpaid amounts.
50-5-14. Authorization for Workers' Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys.
50-5-15. Provision of administrative services to local political subdivisions.
50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves.
50-5-17. Revenue from sale of surplus state equipment.

Article 2

Administrative Space Management

- 50-5-30 through 50-5-39 [Repealed].

Article 3

State Purchasing

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

- 50-5-50. Purposes and policies of part.
50-5-51. Power, authority, and duty of department.
50-5-51.1. Purchase of commercial fidelity bonds for officials, officers, and

- employees of certain county boards and departments.
50-5-52. Power to examine books, records, and papers; report of purchases.
50-5-53. Authorization to employ assistants, fix salaries, and make assignments.
50-5-54. Rules and regulations to be made and published.
50-5-55. Specified purposes for rules and regulations.
50-5-56. Department to establish standard contract specifications.
50-5-57. Duty of department to purchase all supplies, services, materials, and equipment; requisition by state agencies; unlawful purchases.
50-5-58. Cases where purchases through department not mandatory.
50-5-59. State agencies to furnish department estimates and inventories.
50-5-60. Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determination as to reasonableness of preference.
50-5-60.1. Use of recycled paper products [Repealed].
50-5-60.2. Use of recycled content paper products.
50-5-60.3. Use of retreaded tires.
50-5-60.4. Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch.
50-5-60.5. Implementation of policies requiring reduction and reuse of materials generated by state agencies.
50-5-61. State and local authorities to give preference to supplies, materials, and agricultural

Sec.		Sec.	
	products produced in Georgia; determination as to reasonableness of preference.		tries when certified as available.
50-5-62.	Preference to local sellers of Georgia products [Repealed].	50-5-74.	Goods and services to be obtained from sheltered workshops and training centers when certified available; standards for certification of availability [Repealed].
50-5-63.	Exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.	50-5-75.	Lease or construction of warehouse space authorized.
50-5-64.	Multiyear contracts authorized; standard form provisions; what funds obligated; interest.	50-5-76.	All tax stamps, tags, and paraphernalia evidencing the payment of tax to be purchased by department; requisition and payment.
50-5-65.	Transfer of personal property titles to effectuate lease purchases; authority; form.	50-5-77.	Multiyear lease, purchase, or lease purchase contracts; required provisions for contracts; calculation and application of savings or enhanced revenues; external oversight committee; annual report.
50-5-66.	Department to compile and consolidate all estimates.	50-5-78.	Financial interest of department personnel in contracts; acceptance of benefits from contractors; penalty; removal from office.
50-5-67.	Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.	50-5-79.	Purchase contracts contrary to part void and officers personally liable.
50-5-68.	Prequalification of prospective suppliers.	50-5-80.	Unlawful to use resources or methods established pursuant to this article to obtain anything of value for personal benefit or gain; penalties for violators; applicability.
50-5-69.	(Effective until July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.	50-5-81.	Unlawful for agencies or subdivisions to purchase other than United States produced beef; exceptions; penalty.
50-5-69.	(Effective July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.	50-5-82.	“State agency” defined; limitations on contracting for goods; role of Department of Revenue.
50-5-70.	Purchases for county boards of education.	50-5-83.	Definitions; requirements for state purchasing card program.
50-5-71.	Emergency purchases authorized; report of circumstances.	50-5-84.	Contracting with companies having business operations in Sudan; scrutinized companies; certifications.
50-5-72.	Construction and public works contracts conducted by department; advertising costs; exceptions.		
50-5-73.	Goods and services to be obtained from correctional indus-		

PART 2

LOCAL POLITICAL SUBDIVISION PURCHASES

50-5-100. Local political subdivision pur-

Sec.

chases through state authorized.

- 50-5-101. Notice to department; establishment of uniform standard specifications; report of annual requirements.
- 50-5-102. Competitive bidding procedure; bidder information; establishment of regulations and standards.
- 50-5-103. Purchase of motor vehicles, material, equipment, or supplies in name of state; procedure.

PART 3

SMALL BUSINESS ASSISTANCE

- 50-5-120. (Effective until July 1, 2015) Short title.
- 50-5-120. (Effective July 1, 2015) Short title.
- 50-5-121. (Effective until July 1, 2015) Definitions.
- 50-5-121. (Effective July 1, 2015) Definitions.
- 50-5-122. Legislative intent.
- 50-5-123. Creation of advisory council; membership; meetings; chairman; executive director.
- 50-5-124. Reports required of advisory council.

PART 4

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

- 50-5-130. Purpose.
- 50-5-131. Definitions.
- 50-5-132. Eligibility and procedures for certification; appeal of denial.
- 50-5-133. Fraud in certification process; penalty; effect of multiple violations.

PART 5

STATE USE COUNCIL

- 50-5-135. Creation; membership; terms; appointments; compensation; existence.
- 50-5-136. Powers and authority of council.
- 50-5-137. Participation of certified community based rehabilitation programs.
- 50-5-138. Procurement of contracts with central nonprofit agencies; fees; cancellation or modification; existing contracts grandfathered.

Article 4

Disposition of Surplus Property

- 50-5-140. Department to request lists of surplus property.
- 50-5-141. Transfer, sale, trade, or destruction authorized; prohibition of certain employee purchases.
- 50-5-142. Commissioner to promulgate rules and regulations.
- 50-5-143. Transfer to political subdivision by negotiated sale; conditions.
- 50-5-144. Transfer to charitable institutions or public corporations by negotiated sale; conditions.
- 50-5-145. Limited application of provisions.
- 50-5-146. Penalty.

Article 5

Communication Services

50-5-160 through 50-5-202 [Repealed].

Cross references. — Powers and duties of Department of Administrative Services regarding transportation services for officers and employees of state, T. 50, C. 19. Juvenile Court forms, Uniform Rules

for the Juvenile Courts of Georgia, Rule 3.8. Maintenance by Juvenile Court of prescribed forms, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.8(c).

ARTICLE 1

GENERAL PROVISIONS

50-5-1. Department created; commissioner appointed.

There is created a Department of Administrative Services. The department head is the commissioner. The commissioner shall be appointed by the Governor by and with the advice and consent of the Senate. The commissioner shall serve at the pleasure of the Governor and shall receive a salary to be set by the Governor. (Ga. L. 1972, p. 1015, § 401; Ga. L. 1999, p. 910, § 6; Ga. L. 1999, p. 1213, § 9.)

Cross references. — Power of commissioner to purchase liability insurance for public officers in regard to personal liability for damages arising out of performance of their duties, § 45-9-4.

Editor's notes. — Ga. L. 1999, p. 910, § 6, amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1999, p. 1213, § 9.

OPINIONS OF THE ATTORNEY GENERAL

Department of Administrative Services is the state manager for administrative aspects of the workers' compensation program and, as such, is the agent for each individual department or instrumentality in its relations with the State Board of Workers' Compensation. 1980 Op. Att'y Gen. No. 80-55.

Penalty assessable against department for failure to file timely injury

reports. — State Board of Workers' Compensation may legally assess a penalty against the Department of Administrative Services as the agent for other departments, instrumentalities, and authorities of the state if there is a refusal or willful neglect to file timely reports of injuries required by former Code 1933, § 114-716 (see O.C.G.A. § 34-9-12). 1980 Op. Att'y Gen. No. 80-55.

50-5-2 through 50-5-9.

Reserved. Repealed by Ga. L. 1993, p. 1402, § 1, effective July 1, 1993.

Editor's notes. — Code Sections 50-5-2 through 50-5-9, relating to the fiscal division, the director thereof, and warrants for payment of state government expenses, have been repealed and reenacted

as Code Sections 50-5A-1 through 50-5A-8, relating to the Office of Treasury and Fiscal Services (now Office of the State Treasurer).

50-5-10 and 50-5-11.

Reserved. Repealed by Ga. L. 2000, p. 249, § 3, effective July 1, 2000.

Editor's notes. — Code Sections 50-5-10 and 50-5-11, relating to the Electronic Data Processing-Printing Committee and transfer of functions to the De-

partment of Administrative Services, respectively, were based on Ga. L. 1972, p. 1015, §§ 4, 407; Ga. L. 1985, p. 708, § 21; Ga. L. 1986, p. 855, § 27.

50-5-12. Formulation of self-insurance program for workers' compensation for state employees; return to work program.

The Department of Administrative Services shall formulate and initiate a sound program of self-insurance for workers' compensation benefits for all employees of the state, including employees of authorities. In formulating the self-insurance program, the department is directed to establish a return to work program that promotes the return of an employee to employment by creating transitional employment prior to full recovery by providing temporary assignments for an employee that are meaningful and medically approved until the employee can return to his or her regularly assigned duties. If an agency or authority does not allow an employee to engage in transitional employment under the return to work program, the number of authorized positions in the budget for the agency or authority shall be decreased by the number of employees collecting workers' compensation not engaged in return to work employment for whom return to work plans have been developed. (Ga. L. 1969, p. 234, § 1; Ga. L. 1972, p. 1015, § 406; Ga. L. 2008, p. 245, § 5/SB 425.)

Cross references. — Group self-insurance programs for workers' compensation benefits generally, § 34-9-150 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Administration of program. — Director of department (now commissioner of administrative services) has authority to determine and prescribe how the state workers' compensation self-insurance program will be administered. 1969 Op. Att'y Gen. No. 69-477.

Payment of monetary supplement. — Authority may pay its employees a monetary supplement to workers' compensation payments received by such employ-

ees under the state self-insurance program. 1974 Op. Att'y Gen. No. U74-76.

Access to claimant's file. — Investigators employed by the Department of Administrative Services may legally have access to a state department's personnel file on a claimant for purposes of administering or defending a workers' compensation claim against that department. 1980 Op. Att'y Gen. No. 80-137.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 241. 82 Am. Jur. 2d, Workers' Compensation, §§ 1 et seq., 47, 155.

C.J.S. — 81 C.J.S., States, §§ 224, 225, 256. 99 C.J.S., Workmen's Compensation, §§ 1 et seq., 230 et seq.

ALR. — Workmen's compensation: power of commission to make award against self-insurer, 13 ALR 1385.

Constitutionality of retroactive statute providing compensation for death in service of state, 28 ALR 1100.

50-5-13. Extent, premiums, deductibles, benefit amounts, reserves, and excess coverage for self-insurance program; incentive programs authorized; deduction of unpaid amounts.

The department shall determine the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the premiums to be charged and any deductibles to be paid by agencies and authorities, the amount of benefits to be paid within the scope of the workers' compensation statutes, and type of addition or excess insurance coverage that may be required. The department is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the workers' compensation trust fund provided for in Code Section 50-5-14. (Ga. L. 1969, p. 234, § 1; Ga. L. 1972, p. 1015, § 406; Ga. L. 1982, p. 3, § 50; Ga. L. 2008, p. 245, § 6/SB 425.)

50-5-14. Authorization for Workers' Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys.

In order to finance the continuing liability established with other agencies of state government, the Workers' Compensation Trust Fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance and all moneys received as interest and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the Workers' Compensation Trust Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the Workers' Compensation Trust Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the Workers' Compensation Trust Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in

this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer. (Ga. L. 1972, p. 350, § 1; Ga. L. 2000, p. 1474, § 8; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Workers' Compensation, §§ 1 et seq., 47.

C.J.S. — 99 C.J.S., Workmen's Compensation, § 1 et seq. 100 C.J.S., Workmen's Compensation, § 646 et seq.

ALR. — Constitutionality of retroactive statute providing compensation for death in service of state, 28 ALR 1100.

50-5-15. Provision of administrative services to local political subdivisions.

Any other provision of this chapter notwithstanding, the Department of Administrative Services is authorized to provide any administrative service which it normally provides to the various departments, agencies, and institutions of the state under the authority of this chapter to any local political subdivision within the state. The provision of one or more such administrative services to any or all political subdivisions shall be at the sole discretion of the commissioner of administrative services and such services shall only be rendered after a request for such services from the governing body of the local political subdivision. (Code 1981, § 50-5-15, enacted by Ga. L. 1983, p. 673, § 1; Ga. L. 1988, p. 1944, § 1.)

50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves.

(a) The commissioner of administrative services may establish a program of liability insurance and self-insurance for state authorities.

(b) State funds may be appropriated for the program, but the commissioner shall charge such premiums, deductibles, and other payments as the commissioner determines necessary or useful. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. From the funds

available to the commissioner, the commissioner shall establish such reserves as the commissioner determines necessary, purchase commercial policies, employ consultants, and otherwise administer the program. Any amounts held by the liability insurance or self-insurance funds which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in trust accounts for credit only to the liability insurance and self-insurance funds. The state treasurer shall invest the liability insurance and self-insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the liability insurance and self-insurance funds. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

(c) The commissioner may generally provide for insurance or self-insurance under such terms and conditions as he determines, and he may provide for particular coverages and other terms and conditions of the unique exposures particular to one or more authorities. The commissioner may provide for endorsements for contract liability and, where necessary or convenient to the public functions of an authority, he may also provide for additional insureds.

(d) Where existing programs of insurance and self-insurance have been established among state authorities by contract, the commissioner may arrange with such authorities to replace the existing programs with such programs as he may establish. In doing so he may assume existing and potential liabilities of the established programs. To the extent that funds of the existing programs are not necessary for such purposes, the commissioner may agree to the refund of such funds.

(e) Nothing in this Code section or in any related act of the commissioner or the participating authorities shall be construed as waiving any immunity or privilege of any kind now or hereafter enjoyed by the state or the state authorities, including without limitation defenses under the Eleventh Amendment of the Constitution of the United States, sovereign immunity, or any other legal or factual defense, privilege, or immunity which the state or a participating authority may enjoy or assert. The intent of this authorization is to provide for protection only in the absence of such defenses.

(f) Similarly, nothing in this Code section or in any related act of the commissioner or participating authorities shall pledge or be deemed to pledge the credit of the state. No obligation shall arise beyond the limits

of liability established by the commissioner or beyond such other terms and conditions as he may establish, and no obligation shall be imposed or created upon other funds of the state or upon other funds of the participating authorities.

(g) Nothing in the program of insurance or self-insurance shall cause one authority to be liable for claims of another or otherwise expose the assets of one authority to claims of liability respecting another authority. (Code 1981, § 50-5-16, enacted by Ga. L. 1987, p. 176, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1474, § 9; Ga. L. 2008, p. 245, § 7/SB 425; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “the Office” was substituted for “its Office” in the last sentence in subsection (b).

50-5-17. Revenue from sale of surplus state equipment.

The Department of Administrative Services is authorized to retain in a reserve fund moneys generated from the sale of any surplus personal property pursuant to Article 4 of this chapter. Such funds may be used to cover any cost associated with disposing of the state’s surplus personal property or such funds may, subject to the approval of the Office of Planning and Budget, be used to purchase personal property for the Department of Administrative Services or for any offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state government. (Code 1981, § 50-5-17, enacted by Ga. L. 1988, p. 1944, § 2; Ga. L. 2005, p. 117, § 25/HB 312.)

ARTICLE 2
ADMINISTRATIVE SPACE MANAGEMENT

50-5-30 through 50-5-39.

Reserved. Repealed by Ga. L. 2005, p. 100, § 1/SB 158, effective April 12, 2005.

Editor’s notes. — This article was based on Ga. L. 1976, p. 252, §§ 2-10; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 949, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1989, p. 1641, § 13; Ga. L. 1994, p. 1865, §§ 8-12; Ga. L. 1995, p. 1302, § 15; Ga. L. 1998, p. 128, § 50; Ga. L. 2004, p. 690, § 28.

ARTICLE 3
STATE PURCHASING

Cross references. — Criminal penalty for sale by state officer or employee of personal property to state, § 16-10-6. Criminal penalty for conspiracy in restraint of free and open competition in transactions with state, § 16-10-22.

Guidelines for purchase of textbooks or contracts to purchase textbooks, § 20-2-1014. Purchase and issuance of military property generally, §§ 38-2-31, 38-2-32. Contracts by state or subdivision thereof for purchase, lease, or other acquisition of equipment and supplies from United States, and as to contracts between state and any political subdivision or municipality thereof for acquisition of property, § 50-16-81.

Editor's notes. — By resolution (Ga. L. 1983, p. 598), the General Assembly adopted the temporary plan of operation developed by the Department of Administrative Services to serve as a permanent plan for the operation of the Federal Surplus Property Program in Georgia. (See 40 U.S.C. § 484.)

JUDICIAL DECISIONS

Unilateral modification of existing contracts unlawful. — Contracting procedures for the State of Georgia are controlled by statute. There is no provision in the statute for any state employee to have the power to unilaterally modify existing contracts. Persons dealing with a public officer must take notice of the extent of the officer's powers. *State v. U.S. Oil Co.*, 194 Ga. App. 1, 389 S.E.2d 498 (1989), cert. denied, 194 Ga. App. 912, 389 S.E.2d 498 (1990).

Competitive bidding. — When there is no impediment to competitive bidding, the State Purchasing Act, O.C.G.A. Art. 3, Ch. 5, T. 50, and relevant rules mandate competitive bidding. The statutes and rules clearly mandate that procurers

award contracts to the lowest responsible bidder whenever possible. *Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238 (11th Cir.), cert. denied, 506 U.S. 907, 113 S. Ct. 302, 121 L. Ed. 2d 225 (1992).

Low bidder's constitutionally protected property interest. — Any discretion to choose the lowest responsible bidder for a contract to provide electric service to a new prison did not preclude the lowest responsible bidder's claim to a constitutionally protected property interest in the award of the contract. *Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238 (11th Cir.), cert. denied, 506 U.S. 907, 113 S. Ct. 302, 121 L. Ed. 2d 225 (1992).

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

50-5-50. Purposes and policies of part.

The underlying purposes and policies of this part are:

- (1) To permit the continued development of centralized procurement policies and practices;
- (2) To control and reduce the cost of purchasing, leasing, renting, or otherwise procuring supplies, materials, services, and equipment through the use of centralized purchasing;
- (3) To ensure openness and accessibility by all qualified vendors to the state's purchasing processes so as to achieve the lowest possible costs to the state through effective competition among such vendors;
- (4) To provide for timely, effective, and efficient service to using agencies and to vendors doing business with the state;

(5) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) To provide for increased public confidence in the procedures followed in public procurement; and

(7) To provide safeguards for the maintenance of a procurement system of quality and integrity. (Ga. L. 1931, p. 7, § 2; Code 1933, § 40-1901; Ga. L. 1937, p. 503, § 1; Ga. L. 1939, p. 160, § 1; Ga. L. 1950, p. 280, § 1; Ga. L. 1955, p. 643, § 1; Ga. L. 1979, p. 659, § 1.)

Editor's notes. — Ga. L. 1937, p. 503, § 3, not codified by the General Assembly, provided that nothing contained in the Act would be construed to interfere with or change the law with regard to the printing of the reports of the Supreme Court and the Court of Appeals of Georgia as is set forth in Art. 2 of Ch. 18 of this title.

Ga. L. 1979, p. 659, § 7, not codified by the General Assembly, provided that nothing in Code Sections 50-5-51, 50-5-57, 50-5-58, 50-5-67, and this Code section would be construed to affect, repeal, or limit the operation of either an Act known

as the "Unemployment Compensation Law," approved March 29, 1937 (Code Section 34-8-1 et seq.), as amended, particularly by an Act approved March 31, 1976 (Code Section 34-8-153 et seq.), or an Act known as the "Executive Reorganization Act of 1972," approved April 6, 1972 (Ga. L. 1972, p. 1015).

Law reviews. — For article advocating the inclusion of state purchasing regulations under the Georgia Administrative Procedure Act (Ch. 13, T. 50), see 1 Ga. St. B.J. 269 (1965).

JUDICIAL DECISIONS

Applicability to county. — Long County is not subject to the competitive bidding provisions in O.C.G.A. § 50-5-50 et seq., setting forth the procurement policies and practices for the Department of Administrative Services. *Strykr v. Long County Bd. of Comm'rs*, 277 Ga. 624, 593 S.E.2d 348 (2004).

Rights of rejected bidder. — Even in competitive sealed proposals under O.C.G.A. § 50-5-67(a), a rejected bidder

who alleges the proposal was conducted in an arbitrary and unfair manner falls within the zone of interest to be protected by the procurement laws. *Amdahl Corp. v. Georgia Dep't of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

Cited in *Harrison Co. v. Code Revision Comm'n*, 244 Ga. 325, 260 S.E.2d 30 (1979); *Diverse Power, Inc. v. Jackson*, 285 Ga. 340, 676 S.E.2d 204 (2009).

50-5-51. Power, authority, and duty of department.

The Department of Administrative Services shall have the power and authority and it shall be the department's duty, subject to this part:

(1) To canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, equipment, and services other than professional and personal employment services required by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of this state under competitive bidding in the manner and subject to the conditions provided for in this article;

(2) To establish and enforce standard specifications which shall apply to all supplies, materials, equipment, and services other than professional and personal employment services purchased or to be purchased for the use of the state government for any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(3) To contract for all electric light power, postal, and any and all other contractual purchases and needs of the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state or in lieu of such contract to authorize any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state to purchase or contract for any or all such services;

(4) To have general supervision of all storerooms and stores operated by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state; to provide for transfer or exchange to or between all state offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state or to sell all supplies, materials, and equipment which are surplus, obsolete, or unused; and to maintain inventories of all fixed property and of all movable equipment, supplies, and materials belonging to the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(5) To make provision for and to contract for all state printing, including all printing, binding, paper stock, and supplies or materials in connection with the same, except as provided in this part. For the purpose of obtaining bids on printing, it shall have the power to divide the printing into various classes and to provide stipulations and specifications therefor and advertise, receive bids, and contract separately for the various classes;

(6) To procure all fidelity bonds covering state officials and employees required by law or administrative directive to give such bonds; and, in order to provide the bonds at a minimum expense to the state, the bonds may be procured under a master policy or policies providing insurance agreements on a group or blanket coverage basis with or without deductibles or excess coverage over the state's retention as determined by the commissioner. Fidelity bonds covering state officials and employees which are procured pursuant to this paragraph shall expressly provide that all state officials and employees who are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries under the terms of the fidelity bond. Inclusion of any state official, officer, or employee required by law or administrative directive to be specifically bonded in a master fidelity

bond under the terms of this part shall satisfy any statutory requirement that the official, officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all state officials and employees for any liability or expense of any nature resulting from a claim on the state official's or employee's bonds which is due to or as a result of an act of a subordinate of the state official or employee. In order to finance the continuing liability established with other agencies of state government, the commissioner is authorized to retain all moneys paid to the department as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve for the payment of such liability and the expenses necessary to administer properly the insurance program. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. The commissioner shall invest the moneys in the same manner as other such moneys in his or her possession;

(7) To establish and operate the state agency for surplus property for the purpose of distributing surplus properties made available by the federal government under Pub. L. 152, 81st Congress, as amended, to institutions, organizations, agencies, and others as may be eligible to receive such surplus properties pursuant to applicable provisions of federal law. The commissioner may enter into or authorize the aforesaid state agency for surplus property to enter into cooperative agreements with the federal government for the use of surplus properties by the state agency. The commissioner is authorized to enter into contracts with other state, local, or federal agencies, or with other persons with respect to the construction, operation, maintenance, leasing, or rental of a facility for use by the state agency. Further, the commissioner may acquire real or personal property for such purposes;

(8) To delegate, in the department's discretion, to medical facilities under the jurisdiction of the Board of Regents for the University System of Georgia the ability to purchase medical equipment and medical supplies necessary for medical teaching purposes;

(9) To enter into or authorize agreements with private nonprofit organizations or other states and their political subdivisions to effectuate the purposes and policies of this chapter;

(10) To collect, retain, and carry over from year to year in a reserve fund any moneys, rebates, or commissions payable to the state that are generated by supply contracts established pursuant to Code Section 50-5-57; and

(11) To conduct the procurement of all technology resource purchases not exempted from competitive bidding requirements in accordance with the technology standards and specifications established by the Georgia Technology Authority. (Ga. L. 1931, p. 7, § 3; Code 1933, § 40-1902; Ga. L. 1937, p. 503, § 2; Ga. L. 1943, p. 406, § 1; Ga. L. 1960, p. 78, § 1; Ga. L. 1960, p. 1098, § 1; Ga. L. 1962, p. 644, § 1; Ga. L. 1974, p. 504, § 1; Ga. L. 1975, p. 672, § 1; Ga. L. 1976, p. 252, § 12; Ga. L. 1978, p. 1144, § 1; Ga. L. 1978, p. 1701, § 1; Ga. L. 1979, p. 659, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 1996, p. 885, § 3; Ga. L. 2005, p. 117, § 10/HB 312; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2008, p. 245, § 8/SB 425.)

Cross references. — Authority of State Board of Education regarding purchase of supplies and services by public elementary and secondary schools, § 20-2-500 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “therefor” was substituted for “therefore” in the second sentence of paragraph (5).

Pursuant to Code Section 28-9-5, in 2005, a comma was inserted following “agencies” two times in paragraphs (3) and (4).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that

many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

U.S. Code. — Public Law 152, 81st Congress, referred to in paragraph (7) of this Code section, is codified as 40 U.S.C. § 471 et seq., 40 U.S.C. § 751 et seq., and 41 U.S.C. § 252 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Authority to establish purchase specifications. — It was evident from former Code 1933, § 40-1902 and Ga. L. 1939, p. 160, § 7 (see O.C.G.A. §§ 50-5-51 and 50-5-56) that the department was authorized to establish certain specifications which should apply to purchases which were to be used by the various state

departments; however, it was a practical and physical impossibility to set up specifications for every one of the thousands of different articles which were used by the state departments. 1948-49 Op. Att’y Gen. p. 570.

Authority to enforce specifications. — Supervisor of purchases (now commis-

sioner of administrative services) may cancel purchase orders when the material fails to meet specifications. 1945-47 Op. Att'y Gen. p. 318.

Department has the authority to enforce specifications, and this would include the authority to cancel orders when items do not meet specifications. 1948-49 Op. Att'y Gen. p. 570.

Solicitation of bids for certain purchases. — With respect to purchases in excess of \$1,000.00, bids must be solicited or advertised for in some manner reasonably calculated to reach all reasonably available sources of supply. 1974 Op. Att'y Gen. No. 74-16.

Competent vendors. — Department is under duty to exclude no competent vendor from department's list, and also to seek out and discover, to the best of the department's ability, all sources of supply, giving all such vendors access to the established list. 1974 Op. Att'y Gen. No. 74-16.

Purchase of antique items. — If the supervisor of purchases (now commissioner) receives a requisition for a particular antique item and, after canvassing all available sources of supply can find only one dealer who can supply the requisitioned antique item, and is convinced that no other suitable substitute item can be used, the supervisor can receive the bid from the single dealer who can supply the antique item in question. 1968 Op. Att'y Gen. No. 68-143.

Georgia Residential Finance Authority may seek, but is not required to seek, assistance and approval of Department of Administrative Services, Division of Property and Space Management, regarding rental agreements for the authority's office space. 1982 Op. Att'y Gen. No. 82-24.

Absent clear authorization, the Department of Administrative Services to deal with the Georgia Residential Finance Authority as a "state agency" the latter does not come within that definition. 1982 Op. Att'y Gen. No. 82-24.

Georgia Correctional Industries Administration. — Georgia Correctional Industries Administration must utilize department in buying raw materials which will be used in the manufacture and

production of products for resale. 1967 Op. Att'y Gen. No. 67-316.

Area planning and development commissions. — Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commission in their area. 1970 Op. Att'y Gen. No. 70-202.

Commissioner vested with broad discretion. — O.C.G.A. § 50-5-51 establishes no guideposts or requirements governing the manner of consummating the sales authorized and, consequently, the supervisor of purchases (now commissioner) is vested with broad discretion in this matter. 1960-61 Op. Att'y Gen. p. 380.

Correction of clerical pricing error. — Commissioner may alter purchase order to correct clerical error regarding price. 1962 Op. Att'y Gen. p. 446.

Authority to operate self-service store. — Under the general powers and authority granted to the department, the commissioner may enter into an agreement with the General Services Administration to operate a self-service store which is located conveniently for state agencies and whose expenses are jointly shared. 1971 Op. Att'y Gen. No. 71-181.

Commissioner disposes of property. — Any forest commission property in the nature of supplies, materials, and equipment, in other words, those things that would not be fixtures and thereby part of the realty, is to be disposed of by the supervisor of purchasing (now commissioner). 1960-61 Op. Att'y Gen. p. 381.

Excess capacity or idle computer time. — Excess capacity or idle computer time available on a second-shift basis was not "unserviceable property" within the contemplation of former Code 1933, § 91-804 (see former O.C.G.A. § 50-16-144), nor was it "surplus, obsolete or unused" equipment which may be disposed of under former Code 1933, § 40-1902 (see O.C.G.A. § 50-5-51). 1963-65 Op. Att'y Gen. p. 419.

Transfer of equipment to county as gift under this section is not permitted. 1967 Op. Att'y Gen. No. 67-57.

State unobligated to pay franchise fee or tax. — While the state might not be required to pay a franchise fee or other tax directly to a city, in those situations when the state is paying money to a company, and that company is in turn remitting the money to the city as a franchise fee, it cannot be said that the state is the entity which is subject to the legal incidence of the tax so that it could successfully assert an exemption from such fees. 1976 Op. Att'y Gen. No. 76-42.

Payment for utilities at established rate. — Obligation of department to pay for utilities at established rate is not affected by the fact that the sums paid may include or reflect taxes paid by the provider of the services to a municipality. 1976 Op. Att'y Gen. No. 76-42.

Relocation of power lines is not contractual service as contemplated by paragraph (3) of this section; this would be a contract for service or construction which should properly be handled by the interested department. 1962 Op. Att'y Gen. p. 469.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 62 et seq., 249, 252, 273. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 13. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 73, 74, 78.

C.J.S. — 81A C.J.S., States, § 268 et seq.

ALR. — Act or default of employee

covered by fidelity bond or insurance, 43 ALR 977; 46 ALR 976; 62 ALR 412; 77 ALR 861; 98 ALR 1264.

Who is an employee within fidelity bond or insurance, 140 ALR 699.

Right of one covered by a fidelity bond to intervene in action by obligee against obligor, 157 ALR 159.

50-5-51.1. Purchase of commercial fidelity bonds for officials, officers, and employees of certain county boards and departments.

The commissioner of administrative services may, upon request, assist and coordinate with county departments of health, county departments of family and children services, and community service boards the purchase of commercial fidelity bonds for officials, officers, and employees of such boards and departments. The payment of the premium to the commercial fidelity carrier will be the responsibility of such county departments of health, county departments of family and children services, and community service boards. (Code 1981, § 50-5-51.1, enacted by Ga. L. 1994, p. 1717, § 7.)

50-5-52. Power to examine books, records, and papers; report of purchases.

The Department of Administrative Services or the state accounting officer shall have power to examine books, records, and papers of any office, agency, department, board, bureau, commission, institution, or other entity of the state government relative to purchases and to require those in control thereof to furnish the department with copies of

any and all records pertaining thereto. (Ga. L. 1931, p. 7, § 4; Code 1933, § 40-1905; Ga. L. 2005, p. 117, § 11/HB 312.)

50-5-53. Authorization to employ assistants, fix salaries, and make assignments.

Subject to applicable rules of the State Personnel Board, the Department of Administrative Services may appoint as many assistants and employees, and fix their salaries, as are essential to the state's interest in the execution of the terms and provisions of this part. Assignment of an assistant or assistants to any of the departments, institutions, or agencies of the state may be made by the Department of Administrative Services. It shall be unlawful for any other agency of the state to employ any person for the purposes set out in this part unless that person complies with the minimum requirements for purchasing personnel established by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 17; Ga. L. 1939, p. 160, § 8; Ga. L. 2005, p. 117, § 12/HB 312; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-99/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in the first sentence, and deleted "State Personnel Administration in conjunction with the" preceding "Department of Administrative Services" in the last sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 26 et seq., 61 et seq. 81A C.J.S., States, § 166 et seq.

50-5-54. Rules and regulations to be made and published.

The commissioner of administrative services is authorized and empowered by this part to make all rules, regulations, and stipulations and to provide specifications to carry out the terms and provisions of this part as may be necessary for the purposes of this part. The rules and regulations as prescribed by the commissioner shall be published in pamphlet form and all the departments of the state government shall be furnished with copies of the same. (Ga. L. 1939, p. 160, § 2.)

JUDICIAL DECISIONS

Manual set out procedures. — Legislature did not have to include an express exhaustion requirement in the Georgia’s State Purchasing Act, O.C.G.A. § 50-5-50 et seq., because the Georgia Vendor Manual, promulgated pursuant to O.C.G.A. § 50-5-54, itself set forth the regulations, including mandatory protest procedures, that were necessary for carrying out the Act’s purposes. *Diverse Power, Inc. v. Jackson*, 285 Ga. 340, 676 S.E.2d 204 (2009).

Timely bid protest. — There was nothing about the ten-day protest window of Dep’t Admin. Serv. Ga. Vendor Manual § 3.8(2) that prevented a utility from filing a timely bid protest as the utility had not been required to obtain more information regarding any alleged wrongdoing by the awarding agency before filing an initial protest to the award of the contract to the utility’s rival. *Diverse Power, Inc. v. Jackson*, 285 Ga. 340, 676 S.E.2d 204 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive ve-

hicles and promulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att’y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 13.

C.J.S. — 81A C.J.S., States, § 268 et seq.

50-5-55. Specified purposes for rules and regulations.

The commissioner of administrative services may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this part:

- (1) Requiring monthly reports by state departments, institutions, or agencies of stocks, supplies, materials, and equipment on hand and prescribing the form of such reports;
- (2) Prescribing the manner in which supplies, materials, and equipment shall be delivered, stored, and distributed;
- (3) Prescribing the manner of inspecting deliveries of supplies, material, and equipment and making chemical or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions, or agencies in compliance with specifications;
- (4) Prescribing the manner in which purchases shall be made by the Department of Administrative Services in all emergencies as defined in Code Section 50-5-71; and

(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this part. (Ga. L. 1937, p. 503, § 13; Ga. L. 1939, p. 160, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

Purchases of drugs covered by federal patents. — Department has no authority under Ga. L. 1939, p. 160, § 6 (see O.C.G.A. § 50-5-55) either to authorize or prohibit purchases of foreign made drugs that, if made in this country, would be covered by United States patents; insofar as a rule sought to carry forth the intent of former Code 1933, § 40-1903 (see O.C.G.A. § 50-5-60), favoring of Georgia products, it would be perfectly within its power and authority. 1963-65 Op. Att'y Gen. p. 55.

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive vehicles and promulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att'y Gen. No. 67-219.

50-5-56. Department to establish standard contract specifications.

It shall be the duty of the Department of Administrative Services to formulate, adopt, establish, and modify standard specifications applying to state contracts. In the formulation, adoption, and modification of any standard specifications, the Department of Administrative Services shall seek the advice, assistance, and cooperation of any state department, institution, or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall insofar as possible satisfy the requirements of a majority of the state departments, institutions, or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect to every state purchase of the commodity described in such specifications. In the preparation of any standard specifications, the Department of Administrative Services shall have power to make use of any state laboratory for chemical and physical tests in the determination of quality. (Ga. L. 1937, p. 503, § 14; Ga. L. 1939, p. 160, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Establishment of specifications applicable to purchases. — It is evident from Ga. L. 1937, §§ 2 and 14 (see O.C.G.A. §§ 50-5-51 and 50-5-56) that the department is authorized to establish certain specifications which shall apply to purchases which are to be used by the various state departments; however, it is a

practical and physical impossibility to set up specifications for every one of the thousands of different articles which are used by the state departments. 1948-49 Op. Att'y Gen. p. 570.

Responsibilities of department. — Ultimate responsibility for determining whether a product complies with a stan-

dard specification lies with department as insofar as necessary to award a contract. does the responsibility for making all ultimate determinations as to acceptability 1974 Op. Att’y Gen. No. 74-16.

50-5-57. Duty of department to purchase all supplies, services, materials, and equipment; requisition by state agencies; unlawful purchases.

The Department of Administrative Services shall have the power and authority and it shall be the department’s duty, subject to this part, to contract for the purchase, lease, or other mode of acquisition of all supplies, materials, services other than professional and personal employment services, and equipment required by the state. After sources of supply have been established by contract under competitive bidding and certified by the Department of Administrative Services to the different departments, institutions, and agencies of the state as provided for in this part, the institutions, agencies, or departments of the state shall make requisition on blanks to be approved by the Department of Administrative Services for such supplies, materials, and equipment required by them from the supply so certified and, except as otherwise provided for or unless the departments, institutions, and agencies of the state obtain written authority from the Department of Administrative Services to do so, it shall be unlawful for any of them to purchase any supplies, materials, or equipment from sources other than as certified to them by the Department of Administrative Services. One copy of the requisition shall be sent to the Department of Administrative Services when the same is issued. (Ga. L. 1950, p. 181, § 1; Ga. L. 1979, p. 659, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

General Services Administration as certified supply source. — Department has the authority to establish the General Services Administration as a certified source of supply for the state agencies. 1971 Op. Att’y Gen. No. 71-114.

Liquified petroleum gas. — Liquified petroleum gas is a usable commodity within the term “supplies” as used in this section; it is the duty of the department to obtain competitive bids for the purchase of liquified petroleum gas for use and consumption by the state government. 1958-59 Op. Att’y Gen. p. 313.

Department not required to purchase certain signs. — Signs which are

the result of creative commercial art as practiced by a professional advertising firm are neither supplies, material, nor equipment, the purchase of which would be required of the department in accordance with this section. 1963-65 Op. Att’y Gen. p. 280.

Procurement of health insurance contracts. — State Personnel Board, and not the Department of Administrative Services, has the exclusive authority to contract with health maintenance organizations for health insurance benefits for state employees and public school teachers under the State Health Benefit Plan. 1987 Op. Att’y Gen. No. 87-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 13. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 73, 74, 78.

C.J.S. — 81A C.J.S., States, § 274 et seq.

50-5-58. Cases where purchases through department not mandatory.

(a) Unless otherwise ordered by the Department of Administrative Services, the purchase of supplies, materials, equipment, and services, other than professional and personal employment services, through the Department of Administrative Services shall not be mandatory in the following cases:

(1) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets, and periodicals for the use of any library in the state supported by state funds; also services;

(2) Livestock for slaughter and perishable articles such as fresh vegetables, fresh meat, fish and oysters, butter, eggs, poultry, and milk. No other article shall be considered perishable within the meaning of this paragraph unless so classified by the Department of Administrative Services; and

(3) Emergency supplies of drugs, chemicals and sundries, dental supplies, and equipment.

(b) In the purchasing of emergency supplies under paragraph (3) of subsection (a) of this Code section, it shall be the duty of the department making such purchases to report the same to the Department of Administrative Services, giving the circumstances necessitating the purchases.

(c) Nothing in this part shall be construed to give the Department of Administrative Services any supervision over the selection or purchase of school textbooks, which is vested by law in the Department of Education. (Ga. L. 1937, p. 503, § 8; Ga. L. 1939, p. 160, § 4; Ga. L. 1970, p. 287, § 1; Ga. L. 1979, p. 659, § 6; Ga. L. 1996, p. 885, § 4; Ga. L. 2008, p. 267, § 7/SB 482; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “of this paragraph” for “of this clause” in paragraph (a)(2) and substituted “to report the same” for “to report same” in subsection (b).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The

General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It

is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

OPINIONS OF THE ATTORNEY GENERAL

Skilled services contracts. — Contract for necessary skilled services in repairing and maintaining school equipment and installations does not come under Ga. L. 1931, p. 7 (see O.C.G.A. Art. 3, Ch. 5, T. 50) requiring a competitive bid through the office of the supervisor of purchases (now commissioner), but may be negotiated or let by competitive bid by the State Board of Education as may be deemed necessary and advisable under the particular circumstances. 1960-61 Op. Att'y Gen. p. 179.

Educational sound film as "technical supply." — Inasmuch as educational sound film is "one of a kind" and available from only one source, it could legally be treated as a "technical supply," especially in view of a rather strong indication in

this section of a legislative intent that library materials of the same general nature not be included among those items which must be purchased through the department. 1963-65 Op. Att'y Gen. p. 612.

Term "textbook" does not have such broad definition as would include "sound film." 1963-65 Op. Att'y Gen. p. 612.

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate program of petroleum credit card purchases by state employees for state-owned automotive vehicles and promulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att'y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 13. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 73, 74, 78.

C.J.S. — 81A C.J.S., States, § 274 et seq.

ALR. — What is an "emergency" within charter or statutory provision excepting

emergency contract or work from requirement of bidding on public contracts, 71 ALR 173.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

50-5-59. State agencies to furnish department estimates and inventories.

It shall be the duty of all departments, institutions, or agencies of the state government to furnish to the Department of Administrative Services when requested and on blanks to be approved by it tabulated estimates of all supplies, materials, and equipment needed and required by the department, institution, or agency for such periods in advance as may be directed by the Department of Administrative Services; and it shall further be the duty of all departments, institu-

tions, or agencies to furnish the Department of Administrative Services inventories from time to time of supplies, materials, or equipment on hand when requested by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 5.)

50-5-60. Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determination as to reasonableness of preference.

(a) The state and any department, agency, or commission thereof, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state, or by any local government of such state, to vendors resident therein over vendors resident in the State of Georgia.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the state or its department, agency, or commission shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The state or its department, agency, or commission shall not divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1933, p. 1178; Code 1933, § 40-1903; Ga. L. 1937, p. 503, § 11; Ga. L. 1990, p. 1466, § 1; Ga. L. 2009, p. 204, § 3/SB 44; Ga. L. 2012, p. 1098, § 1/SB 358.)

The 2012 amendment, effective July 1, 2012, inserted “, or by any local government of such state,” near the end of subsection (b).

Cross references. — Conspiracy in restraint of free and open competition in transactions with state or political subdivisions, § 16-10-22. Preferences for products manufactured in Georgia, § 36-84-1.

Editor's notes. — Ga. L. 2009, p. 204,

§ 6/SB 44, not codified by the General Assembly, provides that: "This Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective." This Act became effective July 1, 2009.

JUDICIAL DECISIONS

Applicability of laws. — Laws applicable to the Department of Administrative Services are not applicable to the General

Assembly. *Harrison Co. v. Code Revision Comm'n*, 244 Ga. 325, 260 S.E.2d 30 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Contracting with foreign corporations. — This section does not prohibit the department from contracting with foreign corporations where the state will benefit as a result of such arrangement. 1948-49 Op. Att'y Gen. p. 568.

Purchases of drugs covered by federal patents. — The department has no authority under Ga. L. 1939, p. 160, § 6

(see O.C.G.A. § 50-5-55) either to authorize or prohibit purchases of foreign made drugs that, if made in this country, would be covered by United States patents; insofar as a rule sought to carry forth the intent of that section, favoring of Georgia products, it would be perfectly within its power and authority. 1963-65 Op. Att'y Gen. p. 55.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 21.

ALR. — Validity, construction, and effect of state and local laws requiring gov-

ernmental units to give "purchase preference" to goods manufactured or services performed in state, 84 ALR4th 419.

50-5-60.1. Use of recycled paper products.

Reserved. Repealed by Ga. L. 1991, p. 606, § 2, effective July 1, 1996.

Editor's notes. — This Code section was based on Code 1981, § 50-5-60.1, enacted by Ga. L. 1991, p. 606, § 1.

50-5-60.2. Use of recycled content paper products.

(a) As used in this Code section, the term:

(1) "Mill broke" means any paper waste generated in a paper mill prior to the completion of the paper-making process up to and including the cutting and trimming of the paper machine reel into small rolls or rough sheets.

(2) "Printing and writing paper" means high-grade office paper including but not limited to copier paper, bond paper, forms, stationery, envelopes, text and cover stock, as well as offset printing paper.

(3) "Recycled content paper" means any paper having recycled fiber content.

(4) "Recycled fiber content" means those materials and by-products that have been recovered or diverted from the solid waste stream. Such term does not include sawdust, wood chips, wood slabs, or the virgin content of mill broke.

(b) At least 95 percent of moneys spent on printing and writing paper purchased by state agencies, commissions, and authorities shall be spent upon recycled content paper which meets or exceeds Environmental Protection Agency guidelines for minimum recycled content; provided, however, the provisions of this subsection shall not apply if the price of recycled content paper required by this Code section exceeds 8 percent of the price paid by the Department of Administrative Services for 100 percent virgin paper products or if the recycled content paper required by this Code section does not meet the standards, quality level, and specifications established by the Department of Administrative Services.

(c) It shall be the responsibility of each agency, commission, and authority to monitor, document, and report its use of recycled content paper. Any state agency, institution, commission, and authority that documents and reports attainment of the 95 percent requirement set forth in subsection (b) of this Code section for two consecutive fiscal years shall still be required to monitor and document its use of recycled content paper but shall no longer be required to submit a report upon written confirmation from the Department of Administrative Services that the 95 percent requirement set forth in subsection (b) of this Code section has been satisfied for two consecutive fiscal years by that particular agency, commission, institution, or authority; provided, however, that the Department of Administrative Services shall conduct periodic audits, and any state agency, institution, commission, and authority exempted from the reporting requirement pursuant to this subsection that is not satisfying the 95 percent requirement set forth in subsection (b) of this Code section may be directed by the Department of Administrative Services to resume reporting until reattainment of the 95 percent requirement set forth in subsection (b) of this Code section is confirmed for two additional consecutive fiscal years.

(d) The Department of Administrative Services shall maintain and continue to develop and implement reporting procedures and educational programs to assist agencies, commissions, institutions, and authorities in meeting the requirements of this Code section to maximize both purchasing power and the use of recycled products by each such agency, commission, institution, and authority. (Code 1981, § 50-5-60.2, enacted by Ga. L. 1991, p. 606, § 1; Ga. L. 1993, p. 531, § 2; Ga. L. 1998, p. 261, § 1; Ga. L. 2006, p. 72, § 50/SB 465.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “confirmation” was substituted for “conformation” in the second sentence of subsection (c).

Editor’s notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procurement of products that con-

tain recovered materials. The General Assembly finds that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of the state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-60.3. Use of retreaded tires.

All state agencies, departments, and authorities shall replace original truck tires of over 16 inch rim size used on nonsteering axles with retreaded tires or subscribe to a retread service as replacement is necessary and as stockpiled tires are depleted; provided, however, that nothing in this Code section shall be construed so as to discourage the use of retreaded tires on other size rims or other types of vehicles if an agency, department, or authority deems such use to be economical, feasible, and desirable. (Code 1981, § 50-5-60.3, enacted by Ga. L. 1993, p. 531, § 3; Ga. L. 2010, p. 105, § 1-2/HB 981.)

Editor’s notes. — Ga. L. 2010, p. 105, § 3-1/HB 981, not codified by the General Assembly, provided for the repeal of the 2010 amendment by that Act, effective June 30, 2013.

Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procure-

ment of products that contain recovered materials. The General Assembly finds that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-60.4. Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch.

(a) All state agencies, departments, and authorities responsible for the maintenance of public lands shall give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference shall be given to compost and mulch made in the State of Georgia from organics which are source separated from the state’s nonhazardous solid waste stream.

(b) The Department of Agriculture shall develop and publish in print or electronically standards for the compost and mulch required by

subsection (a) of this Code section by January 1, 1994. (Code 1981, § 50-5-60.4, enacted by Ga. L. 1993, p. 531, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “State of Georgia” was substituted for “state of Georgia” in subsection (a).

Editor’s notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procurement of products that con-

tain recovered materials. The General Assembly finds that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-60.5. Implementation of policies requiring reduction and reuse of materials generated by state agencies.

In addition to recycling, each state agency, department, and authority shall take action to implement policies which require reduction and reuse of materials generated by state agencies. These policies shall include, but not be limited to, double-sided printing and copying, refilling and reusing laser printer cartridges, the purchase of source reduced products, and where feasible discontinuing the use of 8 1/2" x 14" paper. Replacement copier machines should include double-sided copying capability and shall be compatible with the use of paper containing recycled content. (Code 1981, § 50-5-60.5, enacted by Ga. L. 1993, p. 531, § 3.)

Editor’s notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procurement of products that contain recovered materials. The General Assembly finds that it is in the public inter-

est for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-61. State and local authorities to give preference to supplies, materials, and agricultural products produced in Georgia; determination as to reasonableness of preference.

(a) State and local authorities created by law, in the purchase of and contracting for any supplies, materials, equipment, and agricultural products, excluding beverages for immediate consumption, shall give

preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the state or local authority shall consider, among other factors, information submitted by the bidder which may include the bidder’s estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No state or local authority shall divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this subsection.

(c) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1976, p. 181, § 1; Ga. L. 2009, p. 204, § 4/SB 44.)

Editor’s notes. — Ga. L. 2009, p. 204, § 6/SB 44, not codified by the General Assembly, provides that: “This Act shall not be applied to impair an obligation of

any contract entered into prior to the date this Act becomes effective.” This Act became effective July 1, 2009.

JUDICIAL DECISIONS

Code Revision Commission is not state authority within meaning of this section. Harrison Co. v. Code Revi-

sion Comm’n, 244 Ga. 325, 260 S.E.2d 30 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 20.

50-5-62. Preference to local sellers of Georgia products.

Reserved. Repealed by Ga. L. 2009, p. 204, § 5/SB 44, effective July 1, 2009.

Editor’s notes. — This Code section was based on Ga. L. 1937, p. 503, § 12.

Ga. L. 2009, p. 204, § 6/SB 44, not codified by the General Assembly, provides that: “This Act shall not be applied

to impair an obligation of any contract entered into prior to the date this Act becomes effective.” This Act became effective July 1, 2009.

50-5-63. Exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.

(a) No contract for the construction of, addition to, or repair of any facility, the cost of which is borne by the state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, or repair, and if Georgia forest products are available.

(b) This Code section shall not apply when in conflict with federal rules and regulations concerning construction. (Ga. L. 1963, p. 552, §§ 1, 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 20.

50-5-64. Multiyear contracts authorized; standard form provisions; what funds obligated; interest.

(a) The Department of Administrative Services shall be authorized to execute on behalf of all state agencies subject to this part multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, services, and supplies, provided that any such contract shall be executed only on a standard form developed by the department for such use; and provided, further, that the standard form contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the user agency or the department at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may be renewed only by a positive action taken by the user agency or by the department on behalf of the user agency, and the nature of such action shall be determined by the department and specified in its standard contract;

(3) The contract shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the user agency under the contract. The determination of the occurrence of such unavail-

ability of funds shall be made by the user agency in its sole discretion and shall be conclusive;

(4) The contract shall state the total obligation of the user agency for the fiscal year of execution and shall further state the total obligation which will be incurred in each fiscal year renewal term, if renewed; and

(5) The contract shall provide that title to any supplies, materials, or equipment shall remain in the vendor until fully paid for by the user agency.

(b) Any standard contract developed hereunder containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the user agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the user agency, for those sums payable in the individual fiscal year renewal term.

(c) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(d) Any such contract may provide for the payment by the user agency of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section. (Ga. L. 1979, p. 352, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 18, 117.

C.J.S. — 81A C.J.S., States, § 335 et seq.

50-5-65. Transfer of personal property titles to effectuate lease purchases; authority; form.

(a) The Department of Administrative Services is authorized to make transfers of title to personal property titled in the name of any department, agency, or institution of the state to private individuals, corporations, or firms for the purpose of effectuating lease purchases of such property between the owning department, agency, or institution and the private individuals, corporations, or firms. Transfers of title shall be made only in conjunction with the execution of a lease purchase agreement between an agency, department, or institution of the state and the transferee acquiring title; and the agreement shall be consummated on the standard agreement form developed pursuant to Code Section 50-5-64.

(b) The departments, agencies, and institutions of the state are authorized to accept the title to property, subject to a contract for lease purchase or installment purchase, upon execution of the aforementioned standard agreement by the Department of Administrative Services; and the department is authorized to transfer title back to the vendor in the name of the department, agency, or institution in the event that the agreement is not fully consummated. (Ga. L. 1980, p. 90, § 1.)

50-5-66. Department to compile and consolidate all estimates.

The Department of Administrative Services shall compile and consolidate all estimates of supplies, materials, and equipment needed and required by all state departments, institutions, and agencies to determine the total requirements of any given commodity. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3.)

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.

(a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed \$100,000.00. When it appears that the use of competitive sealed bidding is either not justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

(1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not justified or is not advantageous to the state;

(2) Proposals shall be solicited through a request for proposals;

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;

(4) A register of proposals shall be prepared and made available for public inspection;

(5) The request for proposals shall state the relative importance of price and other evaluation factors;

(6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with qualified offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors' proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, equipment, or services other than professional and personal employment services made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or

dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services which shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) As used in this paragraph, the term:

(i) "Commercial use applications" means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines. The term shall not include motor vehicles requiring registration and certificate of title or equipment that is considered consumer goods, as that term is defined in Code Section 11-9-102.

(ii) "Multiple award schedule contract" means a contract that allows multiple vendors to be awarded a state contract for goods or services by providing catalogues of equipment and attachments to eligible purchasers including state agencies, departments, institutions, public school districts, and political subdivisions. Multiple award schedule contract bids shall be evaluated based upon a variety of factors, including but not limited to discounts, total life costs, service, warranty, machine performance and durability, resale value, product support, and past vendor performance. Multiple award schedule contracts shall allow multiple vendors to bid and be awarded a contract based upon the value of their products and demonstrated results in competitive pricing, product updates, transparency, administrative savings, expedited procurement, and flexibility for state purchasers.

(B) When the commissioner of administrative services determines it to be in the best interest of the state, a multiple award schedule contract may be let for the purchase of equipment used for commercial use applications. All bidders for contracts for the purchase of equipment for commercial use applications shall be required to submit a complete bid package and be the authorized dealer or vendor for a leading manufacturer of equipment used for commercial use applications. Bidders may add additional equipment with a guaranteed minimum discount off the manufacturer's

suggested consumer list price in the bid in order to increase the options available to the state.

(C) Nothing in this paragraph shall limit multiple award schedule contracts to commercial use applications.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d)(1) Except as otherwise provided for in this part, the Department of Administrative Services shall publish in print or electronically,

prior to award or letting of the contracts, notice of its intent to award a contract to the successful bidder or offeror on public display in a conspicuous place in the department's office, on the Georgia Procurement Registry, or both so that it may be easily seen by the public. The public notice on public display shall also state the price or the amount for which the contract may be awarded, the commodities or services to be covered by the contract which may be awarded, and the names of all persons whose bids, offers, or proposals were rejected by the department, together with a statement giving the reasons for the rejection.

(2) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror, be subject to public inspection upon request.

(3) The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish the name of the successful bidder or offeror on public display in a conspicuous place in the department's office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish on public display the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection.

(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which will become available for public inspection upon request within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to public disclosure.

(5) Records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for this state, shall not be subject to public disclosure until

after the department's issuance of its public notice of intent to award a contract to the successful bidder or offeror. Such records include but are not limited to cost estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and records revealing preparation for the procurement.

(6) A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

"I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror."

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors' prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction's time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than \$100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however,

any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3; Ga. L. 1978, p. 1054, §§ 1, 2; Ga. L. 1979, p. 659, §§ 4, 5; Ga. L. 1980, p. 90, § 2; Ga. L. 1991, p. 1380, § 1; Ga. L. 1996, p. 885, § 5; Ga. L. 1998, p. 1372, § 1; Ga. L. 2001, p. 792, § 1; Ga. L. 2003, p. 605, § 1; Ga. L. 2005, p. 117, § 13/HB 312; Ga. L. 2008, p. 230, §§ 3, 4/SB 175; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 1178, § 1/SB 492; Ga. L. 2012, p. 1350, § 8B/HB 1067.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (b) as present paragraph (b)(1); substituted “services which shall” for “services, which rules and regulations shall” in the next-to-last sentence of paragraph (b)(1); and added paragraph (b)(2). The second 2012 amendment, effective July 1, 2012, made identical changes.

Cross references. — Letting of Department of Transportation construction and maintenance contracts by public bid, § 32-2-64 et seq. Public competitive bidding procedures for sales and leases of state property, § 50-16-39.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “shall prescribe” in the second sentence in subsection (b) (now paragraph (b)(1)).

Pursuant to Code Section 28-9-5, in 1991, “15” was substituted for “fifteen” in the second sentence of subsection (a).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

JUDICIAL DECISIONS

“Materials, supplies, or equipment.” — Publishing services are not “materials, supplies, or equipment” within the meaning of this section. *Harrison Co. v. Code Revision Comm’n*, 244 Ga. 325, 260 S.E.2d 30 (1979).

Rights of rejected bidder. — Even in competitive sealed proposals under O.C.G.A. § 50-5-67(a), a rejected bidder

who alleges the proposal was conducted in an arbitrary and unfair manner falls within the zone of interest to be protected by the procurement laws. *Amdahl Corp. v. Georgia Dep’t of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

Cited in *Municipal Leasing Corp. v. Fulton County*, 835 F.2d 786 (11th Cir. 1988).

OPINIONS OF THE ATTORNEY GENERAL

Duty to award to lowest bidder. — Once department has considered all relevant factors, the department must award

the contract to the lowest bidder meeting the department’s standards; the department may not award a contract to a higher

bidder if the products are equal in view of all relevant factors. 1974 Op. Att'y Gen. No. 74-16.

Phrase "lowest responsible bidder" has been almost unanimously construed by other jurisdictions to mean not merely "financially solvent," but also "responsible" with respect to the bidder's overall ability to respond in quality and fitness to the particular requirements of the contract in question. 1974 Op. Att'y Gen. No. 74-16.

When department can in good faith point to some demonstrable or real factor which justifies the department's conclusion that a higher dollar bid is nevertheless the "lowest responsible" bid, the department has properly exercised the department's discretionary power. 1974 Op. Att'y Gen. No. 74-16.

Discretion to consider factors other than price. — This section clearly vests considerable discretion in department to consider factors other than price and, in fact, directs the department to consider these factors. 1974 Op. Att'y Gen. No. 74-16.

Specifications not to arbitrarily exclude potential vendors. — Proper execution of the duties of the department demands that the department determine to the best of the department's ability that specifications (either those suggested by the requisitioning agency or those developed by the department) do not arbitrarily exclude potential vendors, and that no

other vendor can in fact meet all applicable and reasonable specifications; only when these duties are properly executed do the exceptions relating to available sources become operative so as to allow the department to forego the requirement of bid solicitation. 1974 Op. Att'y Gen. No. 74-16.

When only one product can meet applicable specifications, there is no necessity to solicit bids from other suppliers of such products since this would be a useless act. 1974 Op. Att'y Gen. No. 74-16.

When product is available from one source only, there is no necessity to solicit bids from other suppliers. 1974 Op. Att'y Gen. No. 74-16.

Requiring that bidder be member of private organization. — State may not require that bidder be member of private organization, but it may require that bidder be properly licensed and insured. 1958-59 Op. Att'y Gen. p. 310.

Public works contracts subject to provisions. — Contract entered into by the environmental protection division for reclamation and rehabilitation of land subjected to surface mining constitutes a public works contract, and is subject to the provisions of Ga. L. 1939, p. 160, § 3 and Ga. L. 1964, p. 693, § 1, (see O.C.G.A. §§ 50-5-67 and 50-5-72). 1976 Op. Att'y Gen. No. 76-98.

Georgia State Financing and Investment Commission is not required to obtain bids on construction contracts. 1975 Op. Att'y Gen. No. 75-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 22 et seq., 48 et seq.

C.J.S. — 81A C.J.S., States, § 270 et seq.

ALR. — Bidder's variation from specifications on bid for public work, 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law, 69 ALR 697.

What is an "emergency" within charter or statutory provision excepting emergency contract or work from requirement

of bidding on public contracts, 71 ALR 173.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond, 86 ALR 131.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder, 110 ALR 1406.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

Authority of state, municipality, or other governmental entity to accept late bids for public works contracts, 49 ALR5th 747.

50-5-68. Prequalification of prospective suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, goods, materials, and equipment at the discretion of the Department of Administrative Services. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers. The award of contracts, however, may be conditioned upon prequalification. (Ga. L. 1980, p. 90, § 3.)

50-5-69. (Effective until July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) (For effective date, see note.) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$25,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations

governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, § 1-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942.)

Delayed effective date. — Code Section 50-5-69 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2011 amendment, effective July 1, 2011, inserted "the commissioner of

public health or his or her designee" near the end of the next-to-last sentence of subsection (a).

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, in subsection (a), substituted "\$25,000.00"

for “\$5,000.00” in the first sentence, and substituted “the Technical College System of Georgia” for “technical and adult education” in the third sentence. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “the commissioner of the Technical College System of Georgia” for “the commissioner of technical and adult education” in subsection (a), and revised language in the last sentence of subsection (c).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The

General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Determination of amount involved in contract within statutory provision requiring public contracts involving

sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

50-5-69. (Effective July 1, 2015) Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) (For effective date, see note.) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$5,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or

his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, §§ 1-1, 2-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942.)

Delayed effective date. — Code Section 50-5-69 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, in subsection (a), substituted “\$25,000.00” for “\$5,000.00” in the first sentence, and

substituted “the Technical College System of Georgia” for “technical and adult education” in the third sentence. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “the commissioner of the Technical College System of Georgia” for “the commissioner of technical and adult education” in subsection (a), and revised language in subsection (c).

50-5-70. Purchases for county boards of education.

Boards of education of the various counties of this state may petition the Department of Administrative Services to purchase their supplies, such as school buses, bus bodies, tires, parts, and other equipment under the rules set out in this part. (Ga. L. 1939, p. 160, § 3.)

Cross references. — Transportation of pupils by school buses generally, § 20-2-1070 et seq.

50-5-71. Emergency purchases authorized; report of circumstances.

In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, unanticipated volume of work, or upon the declaration of a state of emergency by the Governor, the Department of Administrative Services or any other office, agency, department, board, bureau, commission, institution, or other entity of the state to which emergency purchasing powers have been granted by the Department of Administrative Services shall have power to purchase in the open market any necessary supplies, materials, services, or equipment for immediate delivery to any office, agency, department, board, bureau, commission, institution, or other entity of the state. A report on the circumstances of the emergency and the transactions thereunder shall be duly recorded in a book or file to be kept by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 9; Ga. L. 1939, p. 160, § 5; Ga. L. 1996, p. 922, § 1; Ga. L. 2005, p. 117, § 14/HB 312.)

OPINIONS OF THE ATTORNEY GENERAL

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive ve-

hicles and promulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att’y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 30.

ALR. — What is an “emergency” within charter or statutory provision excepting

emergency contract or work from requirement of bidding on public contracts, 71 ALR 173.

50-5-72. Construction and public works contracts conducted by department; advertising costs; exceptions.

(a) Notwithstanding any other provision of this part or any other law dealing with the subject matter contained in this Code section to the contrary, all construction or public works contracts, exceeding a total expenditure of \$100,000.00, of any department, board, bureau, commission, office, or agency of the state government, except as provided in this Code section, shall be conducted and negotiated by the Department of Administrative Services in accordance with this part; provided, however, that any expenditure of less than \$100,000.00 shall still be subject to review and approval by the Department of Administrative Services, which may approve noncompetitive expenditures of up to \$100,000.00.

(b) All advertising costs incurred in connection with such contracts shall be borne by and paid from the funds appropriated to and available to the department, board, bureau, commission, office, or agency of the state government for which the contract is negotiated.

(c)(1) Notwithstanding subsections (a) and (b) of this Code section and to the extent permitted by law, the Department of Administrative Services shall not in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

(A) Require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements, or any other agreement with one or more labor organizations on the same or other related construction projects; or

(B) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors, or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations on the same or other related construction projects.

(2) Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or material suppliers from voluntarily entering into agreements described in paragraph (1) of this subsection.

(3) The head of a governmental entity may exempt a particular public works construction contract from the requirements of any or

all of the provisions of paragraph (1) of this subsection if the governmental entity finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstance under this paragraph shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the particular project who are not members of or affiliated with a labor organization.

(d) The commissioner of administrative services is authorized and directed to promulgate such rules and regulations as shall carry out the additional duties and responsibilities placed upon the department by this Code section.

(e) Nothing contained in this Code section shall apply to or affect the Department of Transportation, the several public authorities of this state, including the Stone Mountain Memorial Association and the Board of Regents of the University System of Georgia, or the expenditure of money credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the Social Security Act and appropriated as provided in Code Section 34-8-85. No contract in existence on March 18, 1964, shall be affected by this Code section, and such contract may continue to be utilized. (Ga. L. 1964, p. 693, § 1; Ga. L. 1991, p. 139, § 3; Ga. L. 1996, p. 885, § 7; Ga. L. 2013, p. 628, § 9/SB 179.)

The 2013 amendment, effective May 6, 2013, designated the existing provisions as subsections (a), (b), (d), and (e), added subsection (c), and inserted a comma following "Code section" near the end of subsection (e).

Cross references. — Liquidated damages provisions in public works contract, § 13-10-70. Letting of Department of Transportation construction and maintenance contracts by public bid, § 32-2-64 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "secretary of the treasury" was substituted for "Secretary of the Treasury" in the fourth sentence (now subsection (e)).

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

U.S. Code. — Section 903 of the Social Security Act, referred to in this Code section, is codified as 42 U.S.C. § 1103.

OPINIONS OF THE ATTORNEY GENERAL

Public works contracts. — Contract entered into by the environmental protection division for reclamation and rehabilitation of land subjected to surface mining constitutes a public works contract, and is subject to the provisions of Ga. L. 1939, p. 160, § 3 and Ga. L. 1964, p. 693, § 1 (see O.C.G.A. §§ 50-5-67 and 50-5-72). 1976 Op. Att’y Gen. No. 76-98.

Contracts for demolition of buildings would constitute public works contracts. 1967 Op. Att’y Gen. No. 67-271.

Obligating other agency’s funds. — This section only provides express authority to conduct and negotiate; there is no express authority to execute contracts. Thus, the Department of Administrative Services does not have the authority to obligate the funds of another state agency for construction or public works contracts. 1980 Op. Att’y Gen. No. 80-99.

Georgia State Financing and Investment Commission is not required to obtain bids on construction contracts. 1975 Op. Att’y Gen. No. 75-58.

RESEARCH REFERENCES

ALR. — Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

Waiver of competitive bidding requirements for state and local public building and construction contracts, 40 ALR4th 968.

50-5-73. Goods and services to be obtained from correctional industries when certified as available.

(a) All services provided or goods, wares, or merchandise produced wholly or in part by the Georgia Correctional Industries Administration and needed by the departments, institutions, and agencies of the state and its political subdivisions supported wholly or in part by public funds shall be obtained from the Georgia Correctional Industries Administration where such services, goods, wares, or merchandise have been certified in writing by the commissioner of corrections as available and of competitive quality and price. Where not certified as available from the Georgia Correctional Industries Administration, services, goods, wares, or merchandise shall be obtained from other agencies or activities of the state which are legally authorized to engage in the provision of such and have certified the availability with the advice and consent of the Department of Administrative Services.

(b) The Georgia Correctional Industries Administration and the commissioner of corrections shall report to the Department of Administrative Services the certification criteria, including but not limited to cost, delivery schedules, and availability within 15 days of notice of certification.

(c) The Georgia Correctional Industries Administration shall notify the Department of Administrative Services of any changes to certified products or services available pursuant to this Code section within 15 days of any such changes. (Ga. L. 1937, p. 503, § 16; Ga. L. 1975, p. 488,

§ 1; Ga. L. 1978, p. 1054, § 3; Ga. L. 1985, p. 283, § 1; Ga. L. 1996, p. 885, § 8.)

Cross references. — Georgia Correctional Industries Administration generally, T. 42, C. 10.

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of

supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

OPINIONS OF THE ATTORNEY GENERAL

Purpose of this section is to remove the purchase of goods manufactured by the Georgia Correctional Industries Administration or other agencies included in this section from having to be purchased through sealed competitive bidding. 1960-61 Op. Att'y Gen. p. 440.

Georgia Correctional Industries Administration must utilize department in buying raw materials which will be used in the manufacture and production of products for resale. 1967 Op. Att'y Gen. No. 67-316.

Factory for the Blind also covered by O.C.G.A. § 50-5-73. — Georgia Factory for the Blind is one of the other

agencies or activities of the state within the meaning of this section. 1960-61 Op. Att'y Gen. p. 440.

Contracts with department for manufacture of license plates. — Department of Offender Rehabilitation (now Department of Corrections) is under an affirmative responsibility to negotiate with the Department of Administrative Services for the contract for the manufacture of license plates, and, in this regard, to advise all participating agencies as to the material specifications which will best utilize existing equipment. 1969 Op. Att'y Gen. No. 69-435.

50-5-74. Goods and services to be obtained from sheltered workshops and training centers when certified available; standards for certification of availability.

Reserved. Repealed by Ga. L. 1993, p. 1736, § 3, effective February 8, 1994.

Editor's notes. — Ga. L. 1993, p. 1736, § 1, provided for the repeal of this Code section. Ga. L. 1993, p. 1736, § 3, provided: "This Act shall become effective only when funds are specifically appropriated for purposes of this Act in an appro-

priations Act making specific reference to this Act." Such funds were appropriated at the 1994 session, effective February 8, 1994.

This Code section was based on Ga. L. 1979, p. 1318, §§ 1, 2.

50-5-75. Lease or construction of warehouse space authorized.

The Department of Administrative Services may rent or lease any warehouse space necessary for a period not to exceed five years, provided the Department of Administrative Services may construct any warehouse on state property only. (Ga. L. 1939, p. 160, § 11.)

50-5-76. All tax stamps, tags, and paraphernalia evidencing the payment of tax to be purchased by department; requisition and payment.

(a) All cigarette tax stamps, loose or smokeless tobacco tax stamps, fertilizer tax tags, and other stamps, tags, and paraphernalia evidencing the payment of tax collected by the state or any department thereof shall be purchased by the Department of Administrative Services subject to the requisition of any department of the state requiring the use of the tax stamps or tags.

(b) Any department requiring tax stamps or stamps, tags, or paraphernalia from the Department of Administrative Services shall make a requisition therefor to the Department of Administrative Services upon forms prescribed by it, which requisition shall be delivered to the state auditor for compilation and check. The tax stamps, fertilizer tax tags, or other stamps, tags, or paraphernalia described in this part and purchased by the Department of Administrative Services shall be paid for by the department for whose use they are purchased. (Ga. L. 1937-38, Ex. Sess., p. 184, § 1, 2; Ga. L. 2003, p. 665, § 43.)

Cross references. — Property tax exemptions for fertilizers, § 48-5-43. Cigarette taxes generally, T. 48, C. 11.

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known

and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

50-5-77. Multiyear lease, purchase, or lease purchase contracts; required provisions for contracts; calculation and application of savings or enhanced revenues; external oversight committee; annual report.

(a) As used in this Code section, the term:

(1) "Agency" means every state department, agency, board, bureau, and commission including without limitation the Board of Regents of the University System of Georgia.

(2) "Authority" means the Georgia Environmental Finance Authority.

(3) “Benefits based funding project” means any governmental improvement project in which payments to vendors depend upon the realization of specified savings or revenue gains attributable solely to the improvements, provided that each benefits based funding project is structured as follows:

(A) The vendor guarantees that the improvements will generate actual and quantifiable savings or enhanced revenues;

(B) The agency develops a measurement tool for calculating the savings or enhanced revenues realized from the project; and

(C) The funding for the project shall be attributable solely to its successful implementation for the period specified in the contract, or, where applicable, from sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(4) “External oversight committee” means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the state accounting officer, the Governor’s designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate Committee on Appropriations.

(5) “Measurement tool” means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expenditure or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

(6) “Special dedicated fund” means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of equipment, goods, materials, personal property, improvements to real property, services, construction services, renovation services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this

chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(2) The contract may be renewed only by a positive action taken by the agency;

(3) In addition to any other remedies available to the agency, the contract shall provide that at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract, the vendor shall be required to remedy the deficit in actual savings or incremental revenue gains by remitting to the state an amount equal to the deficit. The vendor shall also be required to provide at contract execution and upon execution of any contract renewals an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency equal to the value of the project's annual savings or revenue gains;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed; and

(5) The term of the contract, including any renewal periods, may not extend past the date that is ten years from the date of the completion of the project that is the subject of the contract.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the agency, for those sums payable in the individual fiscal year renewal term and only to the extent that savings or enhanced revenues are attributable to the benefits based funding project calculated using the measurement tool and, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(e) Any such contract may provide for the payment by the agency of interest or the allocation of a portion of the contract payment to

interest, provided that the contract is in compliance with this Code section.

(f) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, periodically calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project. To the extent that savings or enhanced revenues are realized, the agency shall transfer from its budget into the special dedicated fund an amount up to but not to exceed the amount owed on the contract for the then current fiscal year term's obligation to provide for payments, or, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains may be transferred to the special dedicated fund by the agency.

(g) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project during the then current fiscal year at least 30 days prior to the end of the then current fiscal year. If the agency renews the contract and to the extent that savings or enhanced revenues are realized in excess of the amount due on the contract in the then current fiscal year term, the agency shall transfer prior to the end of the then current fiscal year from its budget into the special dedicated fund an amount up to but not to exceed the next fiscal year's obligation to provide for future payments.

(h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys remaining in the special dedicated fund shall be deposited in the general fund of the state.

(i) Each agency is authorized to accept title to property subject to the benefits based funding contract and is authorized to transfer title back to the vendor in the event the contract is not fully consummated.

(j) Payments to which a vendor is entitled under the contract may not be assigned without the approval of the agency. In its discretion, the agency may agree that the vendor may assign the payments to which it is entitled under the benefits based funding contract to a third party, provided that the agency will be made party to the assignment agreement and that any such assignment agreement will not alter the obligations of the agency under the contract, specifically including, but not limited to, the provisions required by subsection (b) of this Code section; and provided that the vendor, at the time of the request that the agency agree to an assignment of payments, must provide to the agency an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency

equal to the guaranteed savings for the total project duration including any anticipated renewal periods and the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency must remain in force for the entire project duration including any renewal periods. As savings are realized and verified by the measurement tool during the term of the contract including renewal periods, the value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency may decrease proportionately.

(k) The external oversight committee shall have the responsibility to direct the authority to perform reviews and to recommend approval of all benefits based funding projects advising:

- (1) The overall feasibility of the benefits based funding project;
- (2) The measurement tool;
- (3) The projected savings or enhanced revenues; and
- (4) The dollars to be set aside for vendor payments.

(l) At the recommendation of the authority, each benefits based funding project and the proposed contract shall be approved by the external oversight committee prior to execution of the contract and shall be subject to further review by the authority or the external oversight committee at any time.

(m) Each agency shall prepare and certify an annual report on all contracts entered into pursuant to this Code section, describing the benefits based funding projects, the progress of the projects, the consolidated savings or enhanced revenues of such projects, and such other information as may be relevant. This annual report shall be sent to the authority on behalf of the external oversight committee at a date determined by the authority. The authority shall review and consolidate all agency reports and submit a consolidated report to the Governor, the General Assembly, and the external oversight committee. (Code 1981, § 50-5-77, enacted by Ga. L. 2003, p. 439, § 1; Ga. L. 2010, p. 1091, § 1/SB 194.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraph (a)(2).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and

may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by

and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary

bureaucracy which can result in purchase delays and increased administrative costs.”

Former Code Section 50-5-77 (Ga. L. 1939, p. 160, § 9), relating to the attachment of delivery receipts and purchase orders to paid invoices, was repealed by Ga. L. 1996, p. 885, § 9, effective July 1, 1996.

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1939, p. 160, § 9, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Exception for federal purchases. — Purchase of federal property under Ga. L. 1945, p. 394, §§ 1-4 is an exception to the general purchasing law of this state. 1960-61 Op. Att’y Gen. p. 442 (decided under Ga. L. 1939, p. 160, § 9).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 377 et seq.

50-5-78. Financial interest of department personnel in contracts; acceptance of benefits from contractors; penalty; removal from office.

(a) Neither the commissioner of administrative services, nor any assistant of his, nor any employee of the department shall be financially interested or have any personal beneficial interest either directly or indirectly in the purchase of or contract for any materials, equipment, or supplies, nor in any such firm, corporation, partnership, or association furnishing any such supplies, materials, or equipment to the state government or any of its departments, institutions, or agencies. Except as provided in subsection (b) of this Code section, it shall be unlawful for the commissioner of administrative services or any of his assistants or any employee of the department to accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded any money or anything of more than nominal value or any promise, obligation, or contract for future reward or compensation.

(b) Nothing in this Code section shall preclude the commissioner or any of his assistants or any employee of the department from attending seminars, courses, lectures, briefings, or similar functions at any manufacturer’s or vendor’s facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the commissioner, assistant, or employee with knowledge and information relative to the manufacturer’s or vendor’s products or

services and is one which the commissioner determines would be of benefit to the department and to the state. In connection with any such seminar, course, lecture, briefing, or similar function, nothing in this Code section shall preclude the commissioner, assistant, or employee from receiving meals from a manufacturer or vendor. Nothing in this Code section shall preclude the commissioner, assistant, or employee from receiving educational materials and business related items of not more than nominal value from a manufacturer or vendor.

(c) Nothing contained in this Code section shall permit the commissioner, assistant, or employee to accept free travel from the manufacturer or vendor outside the State of Georgia or free lodging in or out of the State of Georgia.

(d) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. Any person who violates subsection (a) of this Code section shall be subject to being removed from office. (Ga. L. 1937, p. 503, § 15; Ga. L. 1983, p. 546, § 1; Ga. L. 1984, p. 22, § 50.)

Cross references. — Conflicts of interest involving public officers and employees generally, § 45-10-20 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 19. **C.J.S.** — 81A C.J.S., States, § 328 et seq.

50-5-79. Purchase contracts contrary to part void and officers personally liable.

Whenever any department, institution, or agency of the state government required by this part and the rules and regulations adopted pursuant to this part applying to the purchase of supplies, materials, or equipment through the Department of Administrative Services shall contract for the purchase of such supplies, materials, or equipment contrary to this part or the rules and regulations made pursuant to this part, such contract shall be void and of no effect. If any official of such department, institution, or agency willfully purchases or causes to be purchased any supplies, materials, or equipment contrary to this part or the rules and regulations made pursuant to this part, such official shall be personally liable for the cost thereof; and, if such supplies, materials, or equipment are so unlawfully purchased and paid for out of the state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor. (Ga. L. 1937, p. 503, § 10; Ga. L. 1991, p. 1380, § 2; Ga. L. 1992, p. 6, § 50.)

JUDICIAL DECISIONS

Inapplicable to department's contracts for department's own purchases. — O.C.G.A. § 50-5-79 only applies to contracts entered by agencies required to purchase supplies through the Department of Administrative Services;

the statute does not apply to contracts that the department enters for the department's own purchases. *Amdahl Corp. v. Georgia Dep't of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 19.

C.J.S. — 81A C.J.S., States, § 328 et seq.

50-5-80. Unlawful to use resources or methods established pursuant to this article to obtain anything of value for personal benefit or gain; penalties for violators; applicability.

(a) As used in this Code section, the term "person" includes natural persons, firms, partnerships, corporations, or associations.

(b) It shall be unlawful for any person to obtain for his or her own personal benefit, or for the benefit of any other person, any goods, services or other things of value, through any resource or method established pursuant to this article, including, but not limited to, purchase orders, government contracts, credit cards, charge cards, or debit cards.

(c)(1) Any person who violates subsection (b) of this Code section by obtaining any goods, services, or other things of value in the aggregate value of less than \$500.00 shall be guilty of a misdemeanor of a high and aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00. In addition to the foregoing criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(2) Any person who violates subsection (b) of this Code section by obtaining any goods, services, or other things of value in the aggregate value of \$500.00 or more shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of such unlawful purchases, whichever is greater. In addition to the foregoing criminal penalties, any such person shall also be subject to

immediate termination of state employment and shall owe restitution equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each such unlawful purchase was made.

(d)(1) Any person who knowingly assists another person in violating subsection (b) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00 if the unlawfully purchased goods, services, or other things of value are valued in the aggregate of less than \$500.00. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(2) Any person who knowingly assists another person in violating subsection (b) of this Code section shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of the unlawful purchases, whichever is greater, if the goods, services, or other things of value are in the aggregate value of \$500.00 or more. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution for the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(e) This Code section shall not apply to any official employee purchase program for technology resources facilitated by and through the Georgia Technology Authority for state employees and public school employees of county or independent boards of education. (Ga. L. 1939, p. 160, §§ 10, 10a, 10b, 10c; Ga. L. 1996, p. 885, § 10; Ga. L. 2005, p. 117, § 15/HB 312; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2008, p. 776, § 1/HB 1113.)

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior

to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

Ga. L. 2008, p. 776, § 4/HB 1113, not codified by the General Assembly, provides that the amendment to this Code

section shall apply to all transactions occurring on and after July 1, 2008.

JUDICIAL DECISIONS

Cited in Phillips v. State, 127 Ga. App. 499, 194 S.E.2d 278 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att’y Gen. No. 70-202.

Clothing purchases for children at center through department. — Proposed clothing purchase policy of a Georgia Youth Development Center to allow

the students at the center to engage in selective buying by arranging with the supervisor of purchases (now commissioner) to budget a specified total from the center’s budget to be spent for clothes and shoes per quarter at one or more of the local department stores designated in advance by the commissioner cannot be conducted by or through the office of the commissioner. 1968 Op. Att’y Gen. No. 68-8.

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 50-5-80(b) are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att’y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 19.

C.J.S. — 81A C.J.S., States, § 328 et seq.

50-5-81. Unlawful for agencies or subdivisions to purchase other than United States produced beef; exceptions; penalty.

(a) It shall be unlawful for the state; any branch, department, agency, board, or commission of the state; any county, municipality, board of education, or other political subdivision; or any officer, agent, or employee of any of the foregoing to purchase or authorize the purchase of any beef other than beef raised and produced within the United States when the purchase is to be made with governmental funds. This Code section shall not apply to canned meat which is not available from a source within the United States and which is not processed in the United States.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1976, p. 1650, §§ 1, 2.)

50-5-82. “State agency” defined; limitations on contracting for goods; role of Department of Revenue.

(a) As used in this Code section, the term “state agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, municipality, or local or regional governmental authority.

(b) On or after May 13, 2004, the Department of Administrative Services and any other state agency to which this article applies shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding \$100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under Chapter 8 of Title 48 on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental vendor awarded the contract, the name of the vendor’s affiliate, and the certificate of registration number as provided for under Code Section 48-8-59 for the vendor and affiliate of the vendor. (Code 1981, § 50-5-82, enacted by Ga. L. 2004, p. 424, § 1; Ga. L. 2010, p. 662, § 32/HB 1221.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “any” was deleted preceding “local or” near the end of subsection (a); “May 13, 2004” was substituted for “the effective date of this Code section” in subsection (b); and “of this Code section” was inserted in subsection (c).

50-5-83. Definitions; requirements for state purchasing card program.

(a) As used in this Code section, the term:

(1) “Agency” or “agencies” means any entity of this state, including any department, agency, division, council, bureau, board, commis-

sion, public corporation, or authority; provided, however, that such term shall not mean a political subdivision of this state.

(2) "Department" means the Department of Administrative Services.

(3) "Purchasing card" means a credit or debit card issued by a credit card company, bank, or other financial institution and provided by the State of Georgia or any of its agencies under the State of Georgia Purchasing Card Program to state employees for the purpose of making purchases on behalf of such agencies or the state.

(b) Any purchasing card program established by the department or by any other agency shall conform to the following requirements:

(1) Purchasing cards shall only be issued to state employees whose job duties require the use of a purchasing card;

(2) Each agency that allows the use of purchasing cards by its employees shall develop policies and procedures consistent with guidelines developed by the department pursuant to this Code section to identify those job positions within each agency that would require the use of a purchasing card;

(3) Each employee receiving a purchasing card shall be required to sign an ethical behavior agreement for the use of the card which shall be developed by the department;

(4) Each agency that allows its employees to use purchasing cards shall provide for the review of all purchases on such cards, shall maintain receipts for each purchase, and shall maintain a log showing each purchase, the relevant vendor's name, the item purchased, the date of the purchase, the amount of the purchase, the name of the employee making the purchase, and any other information that shall be specified by the department;

(5) Purchases made on purchasing cards shall be reviewed and approved by supervisory personnel at least quarterly;

(6) Purchasing cards shall not be used for items over \$5,000.00 unless the item is:

(A) Purchased pursuant to a valid state contract; and

(B) Purchased in compliance with state procurement policy;

(7) Purchasing cards shall not be used to purchase gift cards;

(8) Purchasing cards shall not be used to purchase alcoholic beverages, tobacco products, or personal items that are not job related, and state contracts for purchasing cards shall contain such prohibitions on the use of such purchasing cards;

(9) The department shall develop a training manual on the use of purchasing cards which shall instruct users of purchasing cards on the maximum value utilization of such purchasing cards and employees who use such purchasing cards shall comply with the provisions of such manual;

(10) Agencies shall review not less than annually all purchasing cards issued to their employees and shall eliminate purchasing cards for employees who demonstrate consistently low usage of such purchasing cards;

(11) Agencies which have more than 100 purchasing cards issued to employees shall establish goals to reduce such number of purchasing cards;

(12) Employees hired for job positions for which purchasing cards are issued shall be subjected to criminal background checks before hiring and a credit check shall be completed by the hiring agency on all employees to whom a purchasing card is issued prior to issue;

(13) Purchasing cards shall be issued only to employees of agencies and no purchasing cards shall be issued to employees of foundations associated with agencies;

(14) Each purchase made with a purchasing card shall be accompanied by a receipt or other documentation listing each item purchased, the purchase price for each item, and any taxes, fees, or other amounts paid in connection with such purchase; and

(15) With respect to any purchase made with a purchasing card, if the employee to whom such card was issued does not provide documentation meeting the requirements of paragraph (14) of this subsection to his or her supervisor for recording on the purchasing log required to be maintained as provided in paragraph (4) of this subsection, such employee shall be personally responsible for such purchase.

(c) Any employee of an agency who knowingly:

(1) Uses a purchasing card for personal gain;

(2) Purchases items on such purchasing card that are not authorized for purchase by such employee;

(3) Purchases items in violation of this Code section; or

(4) Retains for such employee's personal use a rebate or refund from a vendor, bank, or other financial institution for a purchase or the use of a purchasing card

shall be subject to immediate termination of employment, restitution for the amount of the improper purchases, and criminal prosecution.

Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(d) An employee's supervisor who knowingly intentionally, willfully, wantonly, or recklessly allows or who conspires with an employee who is issued a purchasing card to violate subsection (c) of this Code section shall be subject to immediate termination of employment and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(e) The department is authorized to promulgate such rules and regulations as necessary to implement this Code section. (Code 1981, § 50-5-83, enacted by Ga. L. 2008, p. 776, § 2/HB 1113; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2011, p. 387, § 1/HB 290.)

The 2011 amendment, effective July 1, 2011, added paragraph (a)(1); redesignated former paragraphs (a)(1) and (a)(2) as present paragraphs (a)(2) and (a)(3), respectively; in paragraph (a)(3), deleted "departments or" preceding "agencies" in two places; in subsection (b), substituted "agency" for "department or agency of the state" throughout; substituted "Agencies" for "Departments and agencies of the state" at the beginning of paragraphs (b)(10) and (b)(11); deleted "by at least 10 percent by December 31, 2009" following "cards" at the end of paragraph (b)(11); deleted "department or" following "hiring" in paragraph (b)(12); in two places in paragraph (b)(13), deleted "departments

and" preceding "agencies" and deleted "of the state" following "agencies"; and substituted "employee of an agency" for "employee of a department or agency of the state" in the introductory language of paragraph (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2008, p. 776, § 4/HB 1113, not codified by the General Assembly, provides that this Code section shall apply to all transactions occurring on and after July 1, 2008.

Ga. L. 2011, p. 387, § 2/HB 290, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to offenses committed on or after July 1, 2011.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 50-5-83(c) are designated as offenses for

which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

50-5-84. Contracting with companies having business operations in Sudan; scrutinized companies; certifications.

(a) As used in this Code section, the term:

(1) “Business operations” means engaging in commerce in any form in Sudan, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(3) “Government of Sudan” means the government in Khartoum, Sudan, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.

(4) “Marginalized populations of Sudan” include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan’s north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(5) “Military equipment” means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(6) “Mineral-extraction activities” include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(7)(A) "Oil related activities" include:

- (i) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and
- (ii) Constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure.

(B) A company shall not be considered to be involved in oil related activities if:

(i) The company is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph; or

(ii) The company is involved in leasing or owns rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph.

(8) "Power-production activities" means any business operations that involve a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

(9) "Scrutinized company" means a company that is conducting business operations in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

(A) Its business operations are conducted under contract directly and exclusively with the regional government of southern Sudan;

(B) Its business operations are conducted under a license from the Office of Foreign Assets Control or are expressly exempted under federal law from the requirement to be conducted under such a license;

(C) Its business operations consist of providing goods or services to marginalized populations of Sudan;

(D) Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(E) Its business operations consist of providing goods or services that are used only to promote health or education;

(F) Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the contract for goods or services for which they have bid on, or submitted a proposal for, a contract with a state agency; or

(G) It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.

(b)(1) A scrutinized company shall be ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services.

(2) Notwithstanding paragraph (1) of this subsection, the Department of Administrative Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a state agency for goods or services if it is in the best interests of the state to permit the scrutinized company to bid on or submit a proposal for one or more contracts with a state agency for goods or services.

(3) In making this determination, the Department of Administrative Services may utilize the following resources:

(A) Verification by an independent third party or nonprofit organization that a company is either:

(i) Undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a nonprofit organization to benefit one or more marginalized populations of Sudan. The party or organization providing the verification or an independent third party shall evaluate and certify that the significant humanitarian efforts are substantial in relation to the company's Sudan business operations; or

(ii) Through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur; and

(B) A National Interest Waiver issued by the President of the United States excluding a company from the federal contract prohibitions provisions of the Sudan Accountability and Divestment Act (Public Law 110-174).

(c)(1) A state agency shall require a company that submits a bid or proposal with respect to a contract for goods or services, that currently or within the previous three years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company.

(2) A state agency shall not require a company that submits a bid or proposal with respect to a contract for goods or services, and that currently or within the previous three years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company, if the company has obtained permission to bid on or submit a proposal for a contract with a state agency for goods or services pursuant to paragraph (2) of subsection (b) of this Code section.

(d)(1) Not later than August 1, 2009, the Department of Administrative Services shall file a written notice to the United States Attorney General detailing the requirements contained in this Code section, as required by the federal Sudan Accountability and Divestment Act of 2007 (P. L. No. 110-174).

(2) Annually thereafter, the Department of Administrative Services shall file a publicly available report to the General Assembly and the United States Attorney General outlining the actions taken under this Code section.

(3) The Department of Administrative Services shall report to the Attorney General of Georgia the names of companies determined to have submitted false certifications under subsection (c) of this Code section, together with information as to the false certification, and the Attorney General shall determine whether to bring a civil action against the companies. The companies shall pay all costs or fees incurred in a civil action, including those for investigations that led to the discovery of a false certification.

(e) If the Department of Administrative Services determines that a company has submitted a false certification under subsection (c) of this Code section:

(1) The company shall be liable for a civil penalty in an amount that is equal to the greater of \$250,000.00 or twice the amount of the contract for which a bid or proposal was submitted;

(2) The state agency or the Department of Administrative Services may terminate the contract with the company; and

(3) The company shall be ineligible to, and shall not, bid on a state contract for a period of not less than three years from the date the state agency determines that the company submitted the false certification.

The Department of Administrative Services shall report to the Attorney General the name of the company that the Department of Administrative Services determined had submitted a false certification under subsection (c) of this Code section, together with its information as to the false certification, and the Attorney General shall determine

whether to bring a civil action against such company. If such company is found to have submitted a false certification, such company shall be ordered to pay all costs and fees incurred by the state in the civil action, including all costs incurred by the state agency and the Department of Administrative Services for investigations that led to the finding of the false certification and all costs and fees incurred by the Attorney General.

(f) The General Assembly shall periodically review this Code section and determine if any of the following events have occurred which should be construed and deemed to be a basis for repealing this Code section:

(1) The Congress or President of the United States declares the Darfur genocide has been halted for at least 12 months;

(2) The United States revokes all sanctions imposed against the Government of Sudan;

(3) The President of the United States has certified to Congress that the Government of Sudan has honored its commitments to do all of the following:

(A) Abide by United Nations Security Council Resolution 1769 (2007);

(B) Cease attacks on civilians;

(C) Demobilize and demilitarize the Janjaweed and associated militias;

(D) Grant free and unfettered access for delivery of humanitarian assistance; and

(E) Allow for the safe and voluntary return of refugees and internally displaced persons;

(4) The Congress or President of the United States, through legislation or executive order, declares the contract prohibition of the type provided for in this Code section interferes with the conduct of United States foreign policy; or

(5) Such other circumstances as the General Assembly determines to warrant the discontinuance of the provisions of this Code section. (Code 1981, § 50-5-84, enacted by Ga. L. 2009, p. 247, § 2/SB 170.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “, the company shall be subject to” was deleted from the end of the introductory language of subsection (e).

Editor’s notes. — Ga. L. 2009, p. 247, § 1/SB 170, not codified by the General

Assembly, provides that: “The General Assembly finds that:

“(1) Since 1993, the United States Secretary of State has determined Sudan is a country whose government has repeatedly provided support for acts of international terrorism, thereby restricting United

States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.

“(2) On September 21, 2004, in addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State’s finding and stated, ‘At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide.’

“(3) The federal government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the United States Treasury Department’s Office of Foreign Assets Control (OFAC).

“(4) On December 31, 2007, President George W. Bush signed the Sudan Accountability and Divestment Act (Public Law 110-174). The legislation was passed by the Senate and the House of Representatives unanimously. That act authorizes state and local governments to adopt policies to divest from and prohibit contracts with problematic companies operating in Sudan’s oil, power, mineral, and military sectors. That act also prohibits the federal government from contracting with these companies.”

Ga. L. 2009, p. 247, § 3/SB 170, not codified by the General Assembly, provides for severability.

PART 2

LOCAL POLITICAL SUBDIVISION PURCHASES

50-5-100. Local political subdivision purchases through state authorized.

The Department of Administrative Services is authorized to permit local political subdivisions, on an optional basis, to purchase their supplies through the state. (Ga. L. 1968, p. 1352, § 1.)

Cross references. — Power of Department of Administrative Services to permit area planning and development commis-

sions to purchase services and supplies through state, § 50-8-41.

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to

purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att’y Gen. No. 70-202.

50-5-101. Notice to department; establishment of uniform standard specifications; report of annual requirements.

The governing authorities of each of the local political subdivisions in this state shall have the right, from time to time, to determine through study whether an overall substantial price advantage will result to a political subdivision by the means of a local political subdivision either alone or in conjunction with another political subdivision bidding through the Department of Administrative Services on standard items of equipment, supplies, or services or other standard expenses ordinar-

ily needed, procured, or incurred by such governments without a sacrifice of safety or quality. If the governing authority of any political subdivision shall determine that such a price advantage may be obtained by such means on any one or more of such items or expenses, the governing authority or authorities shall make this fact known to the Department of Administrative Services. After receipt of such notice from the political subdivisions, the Department of Administrative Services shall, after consultation with the governing authorities, establish sets of uniform standard specifications for such item or items as may be reasonably required in order to meet the needs and requirements of the requesting political subdivision. The governing authorities of the requesting political subdivision shall, at such times as the Department of Administrative Services shall prescribe, report its probable annual requirements for the standard items to the Department of Administrative Services and the requested time for delivery of the items. The Department of Administrative Services shall compile the requirements together with such other information as may be needed for the purpose of advertising for bids for a uniform state price on the items. (Ga. L. 1968, p. 1352, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to

purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

50-5-102. Competitive bidding procedure; bidder information; establishment of regulations and standards.

The Department of Administrative Services shall advertise for bids for supply of such items in the same manner followed for state purchases; provided, however, that the Department of Administrative Services shall inform prospective bidders that the bid requested is for the furnishing of the items to the designated political subdivisions at the times specified on the basis of a single state price applicable to all such local political subdivisions; that payment for the items as may be purchased by the political subdivisions shall be made by the respective political subdivision to the bidder; that no guarantee is made that any purchase will be made from the successful bidder as a result of such bid; and such other information as may be appropriate under the circumstances. The Department of Administrative Services shall, upon receipt of bids, process the same in the same manner followed for state purchases and promptly notify the governing authorities of the political subdivisions of the name of the successful bidder, the bid price, the terms of delivery guaranteed by the successful bidder, and any other

pertinent information. The commissioner of administrative services shall prescribe regulations necessary for implementation and enforcement of this part and is authorized to establish minimum standards and uniform standard specifications and procedures for the purchase and distribution of equipment, supplies, services, and other expenses for the local political subdivisions of this state. (Ga. L. 1968, p. 1352, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

RESEARCH REFERENCES

ALR. — Public contracts: authority of state or its subdivision to reject all bids, 52 ALR4th 186.

50-5-103. Purchase of motor vehicles, material, equipment, or supplies in name of state; procedure.

Notwithstanding any law to the contrary, the Department of Administrative Services, upon receiving a request to do so from a political subdivision, may purchase for the political subdivision in the name of the state any motor vehicle, material, equipment, or supplies desired by the political subdivision. The commissioner of administrative services is authorized to prescribe such rules, regulations, and procedures as he shall deem advisable concerning the purchase of motor vehicles, material, equipment, and supplies for the political subdivisions. However, no motor vehicle, material, equipment, or supplies shall be purchased in accordance with this Code section until the political subdivision shall place in the hands of the Department of Administrative Services a certified or cashier's check in an amount sufficient to cover the purchase price of the motor vehicle, material, equipment, or supplies. The Department of Administrative Services is authorized and empowered to execute the necessary documents to divest the state of all title in and to such motor vehicles, material, equipment, or supplies, and to vest in the political subdivision for whom the motor vehicle, material, equipment, or supplies were purchased all such rights in and title to the vehicles, material, equipment, or supplies. (Ga. L. 1969, p. 940, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Sheriff not political subdivision. — Sheriff cannot legally purchase vehicle through the state police car contract when the sheriff will personally have the title to the vehicle in the sheriff's own name as opposed to that of the political subdivision for which the person is serving as a sheriff; the sheriff acting as an individual is not a political subdivision, and only political subdivisions are authorized by this section to purchase motor vehicles through the state. 1973 Op. Att'y Gen. No. 73-47.

Area planning and development commissions (now regional develop-

ment centers) are authorized to use department to obtain best prices and terms available in the marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in the commission's area. 1970 Op. Att'y Gen. No. 70-202.

Cost of motor vehicle license plates is expense of Revenue Department. 1969 Op. Att'y Gen. No. 69-461.

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. (Effective until July 1, 2015) Short title.

This part shall be known and may be cited as "The Small Business Assistance Act of 2012." (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, § 1-2/HB 863.)

Delayed effective date. — Code Section 50-5-120 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, substituted "2012" for "1975" in this Code section.

50-5-120. (Effective July 1, 2015) Short title.

This part shall be known and may be cited as "The Small Business Assistance Act of 1975." (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, §§ 1-2, 2-2/HB 863.)

Delayed effective date. — Code Section 50-5-120 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July

1, 2012, and repealed effective July 1, 2015, substituted "2012" for "1975" in this Code section.

Editor's notes. — Ga. L. 2012, p. 760, § 2-2/HB 863, effective July 1, 2015, reenacted this Code section without change.

50-5-121. (Effective until July 1, 2015) Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Georgia resident business” means any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to any bid or proposal to the state or a new business that is domiciled in Georgia and which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place from which business is conducted shall not include a post office box, a leased private mailbox, site trailer, or temporary structure.

(3) “Small business” means a Georgia resident business which is independently owned and operated. In addition, such business must have either fewer than 300 employees or less than \$30 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, § 1-3/HB 863.)

Delayed effective date. — Code Section 50-5-121 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1,

2015, added paragraph (2); redesignated former paragraph (2) as present paragraph (3); and, in paragraph (3), inserted “Georgia resident” in the first sentence, and in the second sentence, substituted “300” for “100” and “\$30 million” for “\$1 million”.

50-5-121. (Effective July 1, 2015) Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Small business” means a business which is independently owned and operated. In addition, such business must have either fewer than 100 employees or less than \$1 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, §§ 1-3, 2-3/HB 863.)

Delayed effective date. — Code Section 50-5-121 is set out twice in this Code. The first version is effective until July 1, 2015, and the second version becomes effective on that date.

The 2012 amendment, effective July 1, 2012, and repealed effective July 1, 2015, added paragraph (2); redesignated former paragraph (2) as present para-

graph (3); and, in paragraph (3), inserted “Georgia resident” in the first sentence, and in the second sentence, substituted “300” for “100” and “\$30 million” for “\$1 million”.

Editor’s notes. — Ga. L. 2012, p. 760, § 2-3/HB 863, effective July 1, 2015, reenacted this Code section without change.

50-5-122. Legislative intent.

The legislative intent of this part is declared to be as follows: The most important element of the American economic system of private enterprise is free and vigorous competition. Only through the existence of free and vigorous competition can free entry into business and opportunities for personal initiative and individual achievement be assured. The preservation and expansion of such competition is essential for our economic well-being. In order to encourage such competition it is the declared policy of the state to ensure that a fair proportion of the total purchases and contracts or subcontracts for property, commodities, and services for the state be placed with small businesses so long as the commodities and services of small businesses are competitive as to price and quality. (Ga. L. 1975, p. 1619, § 2.)

50-5-123. Creation of advisory council; membership; meetings; chairman; executive director.

There is created an advisory council to the department to be composed of representatives of designated small business enterprises to be named as follows: five by the Governor, two each by the President of the Senate and the Speaker of the House of Representatives, and one by the commissioner of administrative services to serve ex officio as chairman of the council. The members of the council shall serve without compensation. The council shall meet at least once monthly, or more often when necessary, at the call of the chairman in consultation with the commissioner of administrative services or his designee who shall also serve without additional compensation as executive director of the council. (Ga. L. 1975, p. 1619, § 4; Ga. L. 1982, p. 3, § 50.)

50-5-124. Reports required of advisory council.

The council shall make a written report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Senate Committee on Insurance and Labor and the House Economic Development and Tourism Committee at least once each year, such report to be made no later than December 1. The report shall advise the Governor, the Speaker, the President, and the designated chairmen concerning progress toward achieving the legislative intent as set forth in Code Section 50-5-122 and shall contain such recommendations for legislation as the council herein provided for deems proper. (Ga. L. 1975, p. 1619, § 5; Ga. L. 1986, p. 10, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 2009, p. 303, § 16/HB 117.)

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal or-

ganization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

PART 4

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

50-5-130. Purpose.

The General Assembly recognizes that the preservation and expansion of the American economic system of private enterprise is through free competition, but it also recognizes that the security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business enterprises is encouraged and developed. Therefore, it is the intent of the General Assembly that the state define a "minority business enterprise" for purposes of representation in the area of procurement of state contracts for construction, services, equipment, and goods. (Code 1981, § 50-5-130, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-131. Definitions.

As used in this part, the term:

(1) "Minority" means an individual who is a member of a race which comprises less than 50 percent of the total population of the state.

(2) "Minority business enterprise" means a small business concern which is owned and controlled by one or more minorities and is authorized to do and is doing business under the laws of this state, paying all taxes duly assessed, and domiciled within this state.

(3) "Owned and controlled" means a business:

(A) Which is at least 51 percent owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of all classes or types of the stock is owned by one or more minorities; and

(B) Whose management and daily business operations are controlled by one or more minorities. (Code 1981, § 50-5-131, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-132. Eligibility and procedures for certification; appeal of denial.

(a) Any minority business enterprise that desires to claim such status under any law of this state or any regulation promulgated

pursuant thereto shall first apply for certification, in addition to any other certification required by the provisions of 49 C.F.R. 23, to the Department of Administrative Services.

(b) The Department of Administrative Services shall certify a business which meets the eligibility requirement of this part to qualify as a minority business enterprise. To qualify as a minority business enterprise, the business shall:

- (1) Be a minority business enterprise;
- (2) Submit any documentary evidence to support its status as a minority business enterprise;
- (3) Sign an affidavit stating that it is a minority business enterprise;
- (4) Be qualified to bid pursuant to the provisions of the Department of Administrative Services and other state agencies; and
- (5) Present:
 - (A) An application, including the entire business history of the operation;
 - (B) Birth certificates for all minority principals;
 - (C) If Native American, a tribal registration card or certificate;
 - (D) Current resumes on all principals, key managers, and other key personnel;
 - (E) A current financial statement;
 - (F) Proof of investment by principals;
 - (G) Loan agreements;
 - (H) Lease or rental agreement for space and equipment;
 - (I) Evidence of latest bond;
 - (J) If the applicant is a sole proprietor, a copy of a blank signature card;
 - (K) If the applicant is a partnership, a copy of the partnership agreement; and
 - (L) If the applicant is a corporation, articles of organization, corporation bylaws, copies of all stock certificates, minutes of the first corporate organizational meeting, bank resolution on all company accounts, and a copy of the latest United States corporate tax return.

(c) The Department of Administrative Services shall prepare and maintain a list of certified minority business enterprises.

(d) The Department of Administrative Services may deny certification to any minority business enterprise which does not qualify as such under the provisions of this part. Any person adversely affected by an order of the Department of Administrative Services denying certification as a minority business enterprise may appeal as provided in the regulations of the Department of Administrative Services. (Code 1981, § 50-5-132, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-133. Fraud in certification process; penalty; effect of multiple violations.

(a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority business enterprise for the purposes of this part;

(2) Knowingly and willfully make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of any certification of any entity as a minority business enterprise;

(3) Knowingly and willfully obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualifications of a business entity which has requested certification as a minority business enterprise;

(4) Knowingly and willfully with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this part; or

(5) Knowingly and willfully assign any contract awarded pursuant to the Department of Administrative Services to any other business enterprise without prior written approval of the Department of Administrative Services.

(b) Any person convicted of violating any provision of this Code section shall be guilty of a felony, punishable by imprisonment for not more than five years or a fine of not more than \$10,000.00 or both such imprisonment and fine.

(c) If a contractor, subcontractor, supplier, subsidiary, principal, or affiliate thereof has been found to have violated this Code section and that violation occurred within three years of another violation of this Code section, the Department of Administrative Services shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof

from entering into a state project or state contract; from further bidding to a state entity; from being a subcontractor to a contractor for a state entity; and from being a supplier to a state entity. (Code 1981, § 50-5-133, enacted by Ga. L. 1991, p. 1380, § 3; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (a)(1) and (a)(4).

PART 5

STATE USE COUNCIL

50-5-135. Creation; membership; terms; appointments; compensation; existence.

(a) There is created the State Use Council, hereafter referred to as the council. The council shall be composed of 16 members as follows:

(1) The commissioner of administrative services or his or her designee;

(2) The commissioner of human services or his or her designee;

(2.1) The commissioner of behavioral health and developmental disabilities or his or her designee;

(3) The commissioner of community affairs or his or her designee;

(4) The commissioner of corrections or his or her designee;

(5) Five members appointed by the Governor who shall represent the business community of the state;

(6) Three members appointed by the Governor who shall represent a broad spectrum of persons with disabilities; and

(7) Three members appointed by the Governor who shall represent the interest of organizations representative of persons with disabilities.

(b) Initially, the 11 members appointed pursuant to paragraphs (5) through (7) in subsection (a) of this Code section shall serve staggered terms of office as follows: four members for two years, four members for three years, and three members for four years. Thereafter, each member shall serve for a term of four years. Such members shall serve until the appointment and qualification of their successors. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state.

(c) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as

original appointments. An appointment to fill a vacancy shall be for the unexpired term. The council shall elect its own officers. No vacancy on the council shall impair the right of the quorum to exercise all rights and perform all duties of the council.

(d) The members of the council shall receive no compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses, including travel and any other expenses incurred in the performance of their duties. Reimbursement for travel by a personal motor vehicle shall be made in the same manner and subject to the same limitations as provided for state employees under Code Section 50-19-7.

(e) The council shall have perpetual existence. Any change in name or composition of the council shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part. (Code 1981, § 50-5-135, enacted by Ga. L. 1993, p. 1736, § 2; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 22/SB 244; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (b).

50-5-136. Powers and authority of council.

(a) The State Use Council shall have the authority authorized in this part concerning the procurement of certain services provided and goods, wares, and merchandise produced by community based rehabilitation programs and training centers and purchased by the Department of Administrative Services. All services provided or goods, wares, or merchandise produced wholly or in part by the community based rehabilitation programs and training centers operated by or under contract with the Department of Human Services and needed by the departments, institutions, and agencies of the state and its political subdivisions supported wholly or in part by public funds shall be obtained from community based rehabilitation programs and training centers where availability of such services, goods, wares, or merchandise has been certified in writing by the council.

(b) The State Use Council shall have the following powers and authority:

(1) To designate a central nonprofit agency to represent community based rehabilitation programs and training centers in the state and to facilitate the distribution of orders of the State of Georgia for goods, wares, merchandise, and services on the procurement list among certified community based rehabilitation programs and training centers. As used in this part, the term "central nonprofit agency" means an agency organized under the laws of Georgia and operated

in the interest of persons with disabilities in Georgia, the net income of which does not inure in whole or in part to the benefit of any shareholder or individual. The central nonprofit agency shall be selected using criteria established by the council and shall be selected for a period not to exceed two years, provided that an agency may succeed itself as the central nonprofit agency. The central nonprofit agency will be responsible for selecting the community based rehabilitation program and training center to perform a specific contract for work ordered by the state. Consideration will be given to the strengths of the particular organization, prior work history, and the ability to produce within time and budgetary parameters. Only programs and centers which have been certified by the council will be eligible for state use contracts. Once the community based rehabilitation program and training center has been selected and a subcontract has been established between that community based rehabilitation program and training center and the central nonprofit agency, the central nonprofit agency shall provide management and quality control assistance in the administration of the project. This may be in the form of quality assurance procedures, time and date deadlines, technical assistance in assembly, or a variety of other activities concerning the project at hand. Other than on a specific contract basis, the central nonprofit agency will offer training programs, certification workshops, quality control workshops, and other technical, management, marketing, and general assistance programs to participating programs and centers in the state. These programs may not be mandatory in all cases; however, they will be offered to help the various programs and centers become more productive and efficient in their handling of state use contracts and other work as well. The central nonprofit agency shall maintain the necessary records and data concerning contracts with certified community based rehabilitation programs and training centers and shall maintain communication with community based rehabilitation programs and training centers during the conduct of a contract which has been let with the program and center for various program services as necessary and appropriate;

(2) To develop, in conjunction with the Department of Administrative Services, a list of goods, wares, merchandise, and services which shall be set aside for purchase from community based rehabilitation programs and training centers. This list shall be reviewed annually and goods, wares, merchandise, and services may be added or deleted as necessary and appropriate;

(3) To establish fair market prices for commodities or services on the selected procurement list and to consider recommendations from the procuring agencies, the central nonprofit agency, and other relevant sources. The central nonprofit agency shall analyze the data

and submit a recommended fair market price to the council along with detailed justification necessary to support the recommended prices. Pricing guidelines shall be established by the council in association with standard methodology for determining fair market value. However, the fair market prices shall not exceed the prices normally paid by state agencies for such commodities or services;

(4) To oversee and assist in the development of guidelines for the certification of community based rehabilitation programs and training centers in the State of Georgia. The intent of these guidelines shall be to evaluate the qualifications and capabilities of community based rehabilitation programs and training centers interested in certification; to determine criteria for quality, efficiency, timeliness, and cost effectiveness in the production of goods, wares, merchandise, and services to be procured under the state use plan and purchased by the State of Georgia; and to establish a certification process which shall enable community based rehabilitation programs and training centers qualified under this process to compete in procurement activities provided for by this part. All community based rehabilitation programs and training centers which are certified by the commissioner of human resources (now known as the commissioner of human services for these purposes) as of February 8, 1994, shall not have to undergo the certification evaluation and approval process until 24 months from February 8, 1994;

(5) With respect to the certification process and the designated community based rehabilitation programs and training centers which may enter into contracts under this part, to establish criteria for determining what constitutes a substantial disability to employment that prevents the individual under the disability from currently engaging in normal competitive employment. In establishing the criteria, the council shall consult with appropriate entities of government and take into account the views of nongovernmental entities representing the severely disabled. The council shall give weight to the criteria established by the federal committee for purchase of products and services of the blind and other severely disabled persons, pursuant to the federal Wagner-O'Day Act (41 U.S.C. Sections 46-48b), as amended; and

(6) To make an annual report to the Governor and the General Assembly concerning its activities under this part and the activities and contracts provided by the central nonprofit agency. The State Use Council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 50-5-136, enacted by Ga. L. 1993, p. 1736, § 2; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 2005, p.

1036, § 43/SB 49; Ga. L. 2009, p. 453, §§ 2-2, 2-27/HB 228; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in the next to last sentence of paragraph (b)(1).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1994, “as of February 8, 1994,” and “February 8, 1994” were substituted for “at the time of the effective date of this part” and “said effective date”, respectively, in the last sentence in paragraph (b)(4).

OPINIONS OF THE ATTORNEY GENERAL

Product or service as mandatory source. — Goods and services placed jointly on the set aside list by the Commissioner of Administrative Services and the State Use Council and purchased by the Department of Administrative Services are mandatory sources for the state, subject to the further provisions of the State Use Law. 2007 Op. Att’y Gen. No. 2007-6.

Price determination. — Determination of the “price normally paid by state agencies” is within the purview of the Commissioner of Administrative Services, in that the Commissioner has the general oversight of state purchasing and the Commissioner is empowered to cancel or modify a contract under State Use Law for “noncompetitive pricing reasons.” 2007 Op. Att’y Gen. No. 2007-6.

Service and pricing specifications. — Specifications and parameters for par-

ticular goods and services recommended by agencies should be considered by the State Use Council in certifying availability under O.C.G.A. § 50-5-136(a) and by the Commissioner of Administrative Services and Council in creating the set aside list under O.C.G.A. § 50-5-136(b)(2). 2007 Op. Att’y Gen. No. 2007-6.

Time limit to contracts. — There is no statutory time limit to contracts made under the state use program; however, the Commissioner of Administrative Services and the State Use Council “annually” review the goods and services to be placed on the set aside list, and the contracts are subject to cancellation or modification at any time by the Commissioner for reasons of nonperformance or noncompetitive price. 2007 Op. Att’y Gen. No. 2007-6.

50-5-137. Participation of certified community based rehabilitation programs.

Notwithstanding any other provisions of law to the contrary, certified community based rehabilitation programs and training centers conducting contract work under the state use plan and under the auspices of the central nonprofit agency shall not be required to have prior experience in providing the goods, wares, merchandise, or services in a given contract in order to participate in these contracts. (Code 1981, § 50-5-137, enacted by Ga. L. 1993, p. 1736, § 2.)

50-5-138. Procurement of contracts with central nonprofit agencies; fees; cancellation or modification; existing contracts grandfathered.

(a) The Department of Administrative Services shall contract with the central nonprofit agency to pay a fee to such agency on the basis of

contracts procured from the state. This fee shall be not less than 5 percent nor more than 8 percent of the total contract fee awarded for a particular project. The fees will be added to the fair market price paid by the state agencies and political subdivisions or will be paid from assessments received from the state agencies and political subdivisions by the Department of Administrative Services. The timeliness and methodology of collection of these fees will be decided upon between the Department of Administrative Services and the central nonprofit agency and shall be incorporated into such contract.

(b) The commissioner of administrative services retains the right to cancel or modify contracts which have been selected for procurement under this part for nonperformance and noncompetitive pricing reasons.

(c) All contracts which presently exist between the State of Georgia and community based rehabilitation programs and training centers in Georgia, including the State of Georgia administered Georgia Industries for the Blind, shall be grandfathered in perpetuity, excepting for nonperformance reasons according to the policies, regulations, and determination of the Department of Administrative Services. (Code 1981, § 50-5-138, enacted by Ga. L. 1993, p. 1736, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Cancellation of contracts. — Under O.C.G.A. § 50-5-138(b), the Commissioner of Administrative Services is empowered to cancel or modify contracts when either nonperformance or noncompetitive pricing is present. 2007 Op. Att'y Gen. No. 2007-6.

Establishment of source and fee. — Commissioner of Administrative Services

and the central nonprofit agency must contract with one another in order to establish the mandatory source and to establish the amount, timing, and method of the statutory fee to be paid to the central nonprofit agency by state agencies within statutory parameters. 2007 Op. Att'y Gen. No. 2007-6.

ARTICLE 4

DISPOSITION OF SURPLUS PROPERTY

50-5-140. Department to request lists of surplus property.

It shall be the duty and responsibility of the head of each department, institution, or agency of the state to furnish, upon written request by the Department of Administrative Services on such forms as provided by it, a list of all surplus personal property held by that department, institution, or agency at the time of the request. These requests may be made by the Department of Administrative Services as often as it deems necessary. (Ga. L. 1968, p. 1148, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Disposal of surplus airplane. — Airplane that has been declared surplus property may be disposed of in accordance with Ga. L. 1964, p. 1148, §§ 1 and 5 (see O.C.G.A. §§ 50-5-140 and 50-5-145). 1970 Op. Att’y Gen. No. 70-67.

Disposal of airplane received as gift. — Airplane received by the University of Georgia as a gift, that has never been used, and is not required for the conduct of business of the university, need not be transferred to the Department of

Transportation for disposal. 1970 Op. Att’y Gen. No. 70-67.

Disposal of surplus property by Legislative Services Committee. — There is likely no legal impediment to the Legislative Services Committee transferring the surplus property in the committee’s custody to the custody of the Department of Administrative Services (DOAS) for disposition pursuant to the DOAS authority. 1994 Op. Att’y Gen. No. U94-3.

50-5-141. Transfer, sale, trade, or destruction authorized; prohibition of certain employee purchases.

(a) The Department of Administrative Services is authorized and it shall be its duty to dispose of surplus property by one of the following means:

(1) Transfer to other state agencies;

(2) Sell to the highest responsible bidder for cash;

(3) Sell by fixed price; provided, however, that surplus property sold by fixed price shall have been originally purchased by the state for an amount of \$5,000.00 or less;

(4) Trade in such surplus property on the purchase of new equipment if the Department of Administrative Services shall determine that such action is for the best interest of the state; or

(5) Where the Department of Administrative Services shall determine that the surplus property has no value or that the cost of maintaining and selling the surplus property exceeds the anticipated proceeds from the sale of the surplus property, by destruction and disposal and order of removal from the inventory of the department, institution, or agency with such action noted thereon.

(b) No employee of the Department of Administrative Services or such employee’s immediate family member shall purchase surplus property sold by fixed price or negotiated sale; nor shall any person purchase surplus property by fixed price or negotiated sale for the direct or indirect benefit of any such employee or employee’s immediate family member. (Ga. L. 1968, p. 1148, § 2; Ga. L. 2006, p. 340, § 1/SB 592; Ga. L. 2007, p. 47, § 50/SB 103.)

50-5-142. Commissioner to promulgate rules and regulations.

The commissioner of administrative services shall promulgate such rules and regulations as may be required to carry out Code Sections

50-5-140, 50-5-141, 50-5-143, 50-5-144, and 50-5-146 and shall establish procedures for the disposition of surplus property, including the manner whereby the sale of surplus property shall be advertised and competitive bids for the purchase thereof shall be secured. (Ga. L. 1968, p. 1148, § 3; Ga. L. 1972, p. 838, § 2; Ga. L. 1984, p. 903, § 1; Ga. L. 2006, p. 340, § 2/SB 592.)

OPINIONS OF THE ATTORNEY GENERAL

Rules and regulations must be within limitations. — Although both the Office of Planning and Budget and the Department of Administrative Services have the authority to promulgate rules and regulations, they can only do so via

the narrowly defined limitations imposed by the General Assembly for to do otherwise would be an improper delegation of legislative authority. 1972 Op. Att’y Gen. No. 72-73.

50-5-143. Transfer to political subdivision by negotiated sale; conditions.

(a) As used in this Code section, the term “political subdivision” means any county or municipality of this state or any county or independent board of education of this state.

(b) In addition to the authority provided in Code Section 50-5-141, the Department of Administrative Services shall be further authorized to dispose of surplus property by the transfer of the property to any political subdivision through a negotiated sale if the Department of Administrative Services determines that such sale would be in the best interests of the state, and, under the circumstances, the negotiated sales price would constitute a reasonable consideration for the property.

(c) When any surplus property is transferred to a political subdivision, pursuant to subsection (b) of this Code section, such transfer shall be subject to the following conditions:

(1) The property shall not be resold by any such political subdivision within one year after the transfer without the written consent of the Department of Administrative Services; and

(2) The Department of Administrative Services shall have the right, which shall be exercised at its discretion, to supervise the resale of the property at public outcry to the highest responsible bidder if the resale of the property is within one year after such transfer. (Ga. L. 1972, p. 838, § 1; Ga. L. 1982, p. 3, § 50.)

50-5-144. Transfer to charitable institutions or public corporations by negotiated sale; conditions.

(a) As used in this Code section, the term:

(1) "Charitable institution" means any nonprofit tax-exempt person, firm, or corporation providing services within this state.

(2) "Public corporation" means any public authority or other public corporation created by or pursuant to state law.

(b) In addition to any other authority provided by Code Sections 50-5-140 through 50-5-143, this Code section, and Code Section 50-5-146, the Department of Administrative Services shall be authorized to dispose of surplus property, including surplus property subject to paragraph (7) of Code Section 50-5-51, by the transfer of the property to any charitable institution or public corporation through a negotiated sale if the department determines that such sale would be in the best interests of the state, and, under the circumstances, the negotiated sales price would constitute a reasonable consideration for the property.

(c) When any surplus property is sold to a charitable institution or to a public corporation pursuant to subsection (b) of this Code section, the sale shall be subject to the following conditions:

(1) The property shall not be resold by the purchaser within one year after the sale without the written consent of the Department of Administrative Services; and

(2) The Department of Administrative Services shall have the right and obligation to supervise the resale of the property at public outcry to the highest responsible bidder if the resale is within one year after the sale and, if the resale price exceeds the original negotiated sales price, the amount of the excess shall be paid to the Department of Administrative Services. (Ga. L. 1979, p. 1071, § 1; Ga. L. 2006, p. 340, § 3/SB 592.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "Code Section" was inserted preceding "50-5-146" in subsection (b).

50-5-145. Limited application of provisions.

Nothing contained within Code Sections 50-5-140 through 50-5-144 and 50-5-146 shall be construed so as to apply to any real property owned by the state, and such Code sections shall not apply to such property, nor shall such Code sections be construed so as to prohibit the Attorney General from distributing or selling the published reports of the opinions of the Attorney General. (Ga. L. 1968, p. 1148, § 5; Ga. L. 1972, p. 838, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Disposal of surplus airplane. — Airplane that has been declared surplus property may be disposed of in accordance with Ga. L. 1968, p. 1148, §§ 1 and 5 (see O.C.G.A. §§ 50-5-140 and 50-5-145). 1970 Op. Att'y Gen. No. 70-67.

Disposal of airplane received as gift. — Airplane received by the University of Georgia as a gift, that has never been used, and is not required for the

conduct of business of the university, need not be transferred to the Department of Transportation for disposal. 1970 Op. Att’y Gen. No. 70-67.

50-5-146. Penalty.

Any person who causes state property having a value of less than \$200.00 to be disposed of in violation of this article shall be guilty of a misdemeanor. If such property has a value of \$200.00 or more, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years. (Ga. L. 1968, p. 1148, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 2006, p. 340, § 4/SB 592.)

ARTICLE 5

COMMUNICATION SERVICES

50-5-160 through 50-5-202.

Repealed by Ga. L. 2008, p. 1015, § 10/SB 344, effective May 14, 2008.

Editor’s notes. — This article consisted of Code Sections 50-5-160 through 50-5-169 (Part 1), Code Sections 50-5-180 through 50-5-186 (Part 2), and Code Sections 50-5-190 through 50-5-202 (Part 3), relating to communications services, and was based on Ga. L. 1969, p. 616; Ga. L. 1973, p. 1261, §§ 1-9; Ga. L. 1975, p. 1642,

§§ 1-7; Ga. L. 1991, p. 389, § 1; Ga. L. 1992, p. 480, § 1; Ga. L. 1992, p. 1441, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 1994, p. 2010, § 1; Ga. L. 1995, p. 1302, § 15; Ga. L. 2000, p. 249, §§ 4-6; Ga. L. 2003, p. 354, § 1; Ga. L. 2005, p. 694, § 2/HB 293; Ga. L. 2005, p. 1036, § 44/SB 49.

CHAPTER 5A

OFFICE OF STATE TREASURER

Sec.		Sec.	
50-5A-1.	Office of the State Treasurer created; state treasurer appointed.		Treasurer generally; investments through treasurer.
50-5A-2.	State treasurer required to give bond; conditions.	50-5A-8.	State government expenses to be paid by Governor's warrant drawn on appropriations.
50-5A-3.	Property of state treasurer liable for faithful performance; lien in favor of state.	50-5A-9.	Assignment to Department of Administrative Services for administrative purposes.
50-5A-4.	Bond to be recorded and filed.	50-5A-10.	Transfer of powers and duties from former Office of Treasury and Fiscal Services; Georgia State Financing and Investment Commission; state treasurer.
50-5A-5.	Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.	50-5A-11.	Records not constituting public records.
50-5A-6.	Execution instanter against state treasurer when liable to state.		
50-5A-7.	Duties of Office of the State		

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

50-5A-1. Office of the State Treasurer created; state treasurer appointed.

There is created the Office of the State Treasurer. The state treasurer shall be both appointed and removed by the State Depository Board and shall be in the unclassified service. The state treasurer shall hire the personnel for the office and shall supervise, direct, account for, organize, plan, and execute the functions vested in the office. (Ga. L. 1972, p. 1015, § 408A; Code 1981, § 50-5-2; Code 1981, § 50-5A-1, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

JUDICIAL DECISIONS

Cited in *Carter v. Burson*, 230 Ga. 511; 198 S.E.2d 151 (1973).

50-5A-2. State treasurer required to give bond; conditions.

The state treasurer shall post bond to the state in the sum of \$200,000.00 with a bonding company duly licensed to do business in the state and approved by the Governor, the annual premium of the bond to

be paid from funds appropriated to the Office of the State Treasurer. The bond shall be conditioned as follows:

(1) That the state treasurer faithfully discharge, execute, and perform all and singular the duties required of him or her by virtue of the office and the Constitution and laws of this state;

(2) That the state treasurer faithfully account for and pay over all state moneys received by him or her from time to time by virtue of the office; and

(3) That the state treasurer safely deliver to his or her successor all records, moneys, vouchers, accounts, and effects whatsoever belonging to the office. (Orig. Code 1863, § 87; Code 1868, § 84; Code 1873, § 90; Ga. L. 1876, p. 126, §§ 2, 4; Code 1882, §§ 90, 91b; Civil Code 1895, §§ 188, 190; Civil Code 1910, §§ 217, 219; Ga. L. 1919, p. 383, § 3; Code 1933, § 40-1001; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-3; Ga. L. 1982, p. 843, § 1; Code 1981, § 50-5A-2, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

Cross references. — Official bonds generally, T. 45, C. 4.

JUDICIAL DECISIONS

Insufficiency of unsigned bond. — meet the requirements of this section. Bond unsigned by the treasurer did not Mayo v. Renfroe, 66 Ga. 408 (1881).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130 et seq.

50-5A-3. Property of state treasurer liable for faithful performance; lien in favor of state.

The surety may, by express stipulation in writing, limit its liability to a specific sum to be stated in the bond of the state treasurer, and all the property of the state treasurer to the full amount of the bond and the property of the securities to the amount for which they may be severally bound shall be liable for the faithful performance by the state treasurer of the duties of the office from the date of the execution of the bond. A lien is created in favor of the state upon the property of the state treasurer to the amount of the bond and upon the property of the securities upon the bond to the amount for which they may be severally liable, from the date of the execution of the bond. (Ga. L. 1876, p. 126, § 3; Code 1882, § 91a; Civil Code 1895, § 189; Civil Code 1910, § 218; Code 1933, § 40-1002; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104;

Code 1981, § 50-5-4; Code 1981, § 50-5A-3, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

JUDICIAL DECISIONS

Invalid bond due to lack of affidavit. — Since there was no affidavit of the sureties as to what the sureties were worth attached to the bond, there cannot be a statutory bond in accordance with this section. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Enforcement of bond. — Bond of a state depository is enforced in the same manner as the treasurer's bond. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

State acquires lien for amount of executed bond. — Under former Code 1910, §§ 218 and 1252 (see O.C.G.A. §§ 50-5A-3 and 50-17-58), from the date of the execution of the bond of a state depository, the state has a lien on its property for the amount thereof, and the lien of the state is not limited to such property of the depository as may be reached by levy and sale but extends to all

the property, including choses in action. *Standard Accident Ins. Co. v. Luther Williams Bank & Trust Co.*, 45 Ga. App. 831, 166 S.E. 260 (1932), rev'd on other grounds, *Gormley v. Troup County*, 178 Ga. 446, 173 S.E. 672 (1934).

Lien covers all assets of depository. — Under former Code 1910, §§ 218, 1252 and 1256 (see O.C.G.A. §§ 50-5A-3, 50-17-58, and 50-17-59), the state acquires a lien on all the assets of a depository bank, both those at the time of the execution of the bond and those subsequently acquired. *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Cited in *Fidelity & Deposit Co. v. Howard*, 67 F.2d 961 (5th Cir. 1933); *Gormley v. Board of Comm'rs of Rds. & Revenues*, 178 Ga. 439, 173 S.E. 667 (1934).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 290, 291, 476, 488. 73 C.J.S., Public Administrative Law and

Procedure, §§ 24, 25, 121 et seq. 81A C.J.S., States, §§ 235, 236.

50-5A-4. Bond to be recorded and filed.

The bond of the state treasurer, when duly executed and approved, shall be recorded in the Secretary of State's office and filed in the office of the Governor. (Ga. L. 1876, p. 126, § 5; Code 1882, § 91c; Civil Code 1895, § 191; Civil Code 1910, § 220; Code 1933, § 40-1003; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-5; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-4, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296; Ga. L. 2011, p. 99, § 94/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former second sentence of this Code section, which read: "A copy of the bond, when certified by one of the Governor's secretaries under the seal of the office of the Governor, or a certified copy taken from the records of

the Secretary of State's office shall be received in evidence in any court in lieu of the original." See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment

of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evi-

dence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.

C.J.S. — 67 C.J.S., Officers and Public

Employees, § 141 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, §§ 235, 236.

50-5A-5. Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.

The Governor, at all times when, in the Governor’s opinion, the security or securities of the state treasurer have or are likely to become invalid or insufficient, shall demand and require the state treasurer forthwith to renew the bond to the state, in the amount and according to the form prescribed in Code Sections 50-5A-2 through 50-5A-4, and in case of neglect or refusal by any state treasurer to give bond, with security or securities, within ten days after the same is demanded and required by the Governor, such neglect or refusal shall be a disqualification under the law and shall create a vacancy in the office of the state treasurer. The State Depository Board shall forthwith appoint a fit and proper person to fill the vacancy occasioned thereby; and the appointee shall give bond and security in the same manner and upon the same terms as prescribed for the state treasurer. (Ga. L. 1876, p. 126, § 6; Code 1882, § 91d; Civil Code 1895, § 192; Civil Code 1910, § 221; Code 1933, § 40-1004; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-6; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-5, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 351 et seq.

C.J.S. — 67 C.J.S., Officers and Public

Employees, §§ 73, 74. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, §§ 235, 236.

50-5A-6. Execution instanter against state treasurer when liable to state.

If the state treasurer fails to perform the duties of the office, misapplies or misuses the funds of the state, or fails to account for and pay over any moneys that he or she may have received by virtue of the office, whereby the state treasurer becomes liable to the state, it shall not be necessary to bring an action on the official bond; but the Governor may issue an execution instanter against the state treasurer

and the securities for the amount due the state by the state treasurer, with penalties and costs. The execution shall be directed to all and singular sheriffs of this state and shall be executed by them. The state treasurer and securities shall have only those defenses allowed tax collectors against executions issued against them by the state revenue commissioner. (Ga. L. 1876, p. 126, § 14; Code 1882, § 97b; Civil Code 1895, § 195; Civil Code 1910, § 224; Code 1933, § 40-1005; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-7; Code 1981, § 50-5A-6, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 2010, p. 863, § 1/SB 296.)

JUDICIAL DECISIONS

Words “those defenses” does not apply to an appeal to the Governor but to those allowed to tax collectors and taxpayers under the prohibition of judicial interference; for example: (1) an unconstitutional exaction; (2) where the law does not impose or authorize the tax; and (3) where the defendants do not occupy the official positions alleged. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Enforcement of bond. — Bond of a state depository is enforced in the same manner as the treasurer’s bond. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

Summary remedy not applicable to O.C.G.A. § 45-4-20. — Summary remedy

of Ga. L. 1876, p. 126, § 14 (see O.C.G.A. § 50-5A-6) was not in the contemplation of the legislature when the General Assembly enacted former Code 1873, § 167 (see O.C.G.A. § 45-4-20) declaring what bonds valid though not in conformity with the law. Consequently, this remedy has no application to former Code 1873, § 167. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Resolution of General Assembly fixing director’s (now treasurer’s) amount of liability is unconstitutional. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Cited in *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 351 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 473. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, §§ 235, 236.

50-5A-7. Duties of Office of the State Treasurer generally; investments through treasurer.

(a) It shall be the power and duty of the Office of the State Treasurer:

(1) To receive and keep safely all moneys which shall from time to time be paid to the treasury of this state, and to pay all warrants legally drawn on the treasury by the Governor and countersigned by the comptroller general or, in the comptroller general’s absence, by the deputy comptroller general, and to pay all drafts of the President of the Senate and the Speaker of the House of Representatives for sums lawfully due the members and officers of their respective bodies;

(2) To keep good and sufficient accounting records of every sum of money received into, or disbursed from, the state treasury, utilizing an accounting system in conformity with generally accepted accounting principles and approved by the state accounting officer;

(3) To keep a true and faithful record of all warrants drawn by the Governor on the treasury and all drafts drawn on the treasury by the President of the Senate and the Speaker of the House of Representatives;

(4) To keep a true and faithful record of the accounts with all designated state depositories in which the state's money is deposited, showing the principal amount and the interest earned in each depository;

(5) To keep safely certificates of stock, securities, state bonds, and other evidences of debt and to manage and control the same for the purposes to which they are pledged;

(6) To invest all state and custodial funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(7) To invest all health insurance funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(8) To invest all self-insurance, liability, indemnification, tort claims, workers' compensation, or related funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(9) To invest all other funds in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title; and

(10) To lend securities in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title.

(b) Pursuant to an investment policy adopted by the State Depository Board, the Office of the State Treasurer shall invest funds through the state treasurer. The state treasurer shall invest all funds with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. (Laws 1799, Cobb's 1851 Digest, p. 1022; Laws 1839, Cobb's 1851 Digest, p. 1031; Laws 1843, Cobb's 1851 Digest, p. 1033; Laws 1845, Cobb's 1851 Digest, p. 1035; Ga. L. 1853-54, p. 9, § 10; Ga. L. 1859, p. 67, §§ 2, 3; Code 1863, §§ 89, 105; Code 1868, §§ 86, 103; Ga. L. 1869, p. 12, § 1; Code 1873, §§ 92, 111; Ga. L. 1876, p. 126, §§ 12, 13; Ga. L. 1878-79, p. 88, §§ 2, 4, 5; Code 1882, §§ 97,

111; Civil Code 1895, §§ 199, 218; Civil Code 1910, §§ 228, 252; Code 1933, § 40-1101; Ga. L. 1956, p. 802, § 1; Ga. L. 1972, p. 1015, §§ 408B, 2104; Code 1981, § 50-5-8; Ga. L. 1982, p. 843, § 2; Ga. L. 1992, p. 6, § 50; Code 1981, § 50-5A-7, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2000, p. 1474, § 1; Ga. L. 2004, p. 319, § 1; Ga. L. 2005, p. 694, § 3/HB 293; Ga. L. 2010, p. 863, § 1/SB 296; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (a)(1).

Cross references. — Powers and duties of Office of State Treasurer regarding

local government investment pool, T. 36, C. 83. Payment to Office of State Treasurer of taxes, penalties, interest, and other moneys collected pursuant to revenue and licensing laws, § 48-2-17.

JUDICIAL DECISIONS

Use of interest on state funds. — So much of the opinion in *Renfroe v. Colquitt*, 74 Ga. 618 (1885), which states that the treasurer's earning of interest on state money was not receiving money by virtue of treasurer's office was obiter as being entirely unnecessary to the opinion in that case. *Puckett v. Chambers*, 66 Ga. App. 513, 18 S.E.2d 20 (1941), aff'd sub nom. *Puckett v. Walker*, 194 Ga. 401, 21 S.E.2d 713 (1942).

O.C.G.A. § 50-5A-7 as exclusive remedy. — This section provided an exclusive remedy when enacted, and when a statute creates a new offense and announces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes. *Puckett v. Chambers*, 66 Ga. App. 513, 18 S.E.2d 20 (1941), aff'd sub nom; *Puckett v. Walker*, 194 Ga. 401, 21 S.E.2d 713 (1942).

Warrants properly executed and presented paid. — State treasurer is

authorized to pay out funds of the state in the treasurer's hands only upon warrants signed by the Governor and countersigned by the Comptroller General, or upon drafts signed by the President of the Senate, and the Speaker of the House of Representatives for sums due to the members and officers of their respective bodies; and a petition seeking a writ of mandamus directing the state treasurer to honor and pay, when and if presented, a warrant which the petition failed to show had been executed as required by law, so that there was no failure of the treasurer to perform the treasurer's official duty in paying a warrant properly executed and presented to the treasurer, alleged no cause of action, and was properly dismissed. *Barwick v. Roberts*, 188 Ga. 655, 4 S.E.2d 664 (1939) (decided prior to Executive Reorganization Act of 1972).

Cited in *Gregory v. Hamilton*, 215 Ga. 735, 113 S.E.2d 395 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Treasurer authorized but not required to make advance payments. — State treasurer is not required to make payment under this section but is "authorized" to make payment under the statute; further, if payments are made semi-monthly, the mid-month payment should not exceed the 75 percent limitation. 1971 Op. Att'y Gen. No. 71-59.

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att'y Gen. No. 12-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, §§ 6, 7. 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 241, 346, 363, 492. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 66, 67, 68, 73, 74, 149, 411

et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, §§ 235 et seq., 252, 373 et seq., 393.

ALR. — Particularity of specification of purpose required in appropriation bill, 20 ALR 981.

50-5A-8. State government expenses to be paid by Governor's warrant drawn on appropriations.

The costs and expenses of the maintenance and support of every department, commission, bureau, and other branch or agency of the state government shall be paid out of funds in the state treasury by warrant of the Governor drawn on appropriations duly made by the General Assembly. (Ga. L. 1927, p. 311, § 2; Code 1933, § 40-1102; Code 1981, § 50-5-9; Code 1981, § 50-5A-8, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

Editor's notes. — Ga. L. 2010, p. 863, § 1, effective July 1, 2010, reenacted this Code section without change.

JUDICIAL DECISIONS

Comptroller General is not authorized to draw warrant upon director. Irons v. Harrison, 185 Ga. 244, 194 S.E. 749 (1937).

Cited in Talmadge v. Cordell, 170 Ga. 13, 152 S.E. 91 (1930).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 252 et seq., 346. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66.

C.J.S. — 81A C.J.S., States, §§ 374 et seq., 393.

50-5A-9. Assignment to Department of Administrative Services for administrative purposes.

The Office of the State Treasurer shall be assigned for administrative purposes only to the Department of Administrative Services, as provided in Code Section 50-4-3. (Code 1981, § 50-5A-9, enacted by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

50-5A-10. Transfer of powers and duties from former Office of Treasury and Fiscal Services; Georgia State Financing and Investment Commission; state treasurer.

The Office of the State Treasurer and the state treasurer shall be in all respects the successor agency to, and shall assume all the powers and duties of, the former Office of Treasury and Fiscal Services and its director. Without limiting the generality of the foregoing, the state treasurer shall serve as a member of the Georgia State Financing and Investment Commission; and for that purpose the state treasurer shall also be designated as the director of the Fiscal Division of the Department of Administrative Services. (Code 1981, § 50-5A-10, enacted by Ga. L. 1993, p. 1402, § 2; Ga. L. 2010, p. 863, § 1/SB 296.)

50-5A-11. Records not constituting public records.

(a) The following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Participant account balances in the local government investment pool;

(2) All wiring or Automated Clearing House transfer of funds instructions;

(3) Account analysis statements received or prepared by the staff of the Office of the State Treasurer;

(4) All bank account numbers in the possession of the Office of the State Treasurer and any record or document containing such numbers;

(5) All proprietary computer software in the possession or under the control of the Office of the State Treasurer; and

(6) All security codes and procedures related to physical, electronic, or other access to the Office of the State Treasurer, its systems, and its software.

(b) For a period from the opening of bank accounts until such time as those bank accounts are closed, the local government investment pool resolutions which pertain to the opening and maintenance of bank accounts shall not constitute public records and shall not be open to inspection by the general public.

(c) For a period from the date of creation of the record until the end of the calendar quarter in which the record is created, the following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Investment trade tickets; and

(2) Bank statements of the Office of the State Treasurer.

(d) For a period from the date of creation of the record until 30 days after adoption, bank fee payment schedules shall not constitute public records and shall not be open to inspection by the general public.

(e) The restrictions of subsections (a), (b), (c), and (d) of this Code section shall not apply to access:

(1) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings where the State of Georgia or the Office of the State Treasurer is a party;

(2) In prosecutions or other court actions to which the State of Georgia or the Office of the State Treasurer is a party;

(3) Given to federal or state regulatory or law enforcement agencies;

(4) Given to any person or entity in connection with its account in the local government investment pool managed by the Office of the State Treasurer pursuant to Chapter 83 of Title 36, the “Local Government Investment Pool Act”; or

(5) Given to the Governor, the Attorney General and the Department of Law, the Office of Planning and Budget, officers of the General Assembly, the legislative budget offices, the state accounting officer and the State Accounting Office, the state auditor and the Department of Audits and Accounts, or the State Depository Board for use and public disclosure in the ordinary performance of those officers’ and offices’ duties. (Code 1981, § 50-5A-11, enacted by Ga. L. 1997, p. 569, § 1; Ga. L. 2005, p. 694, § 4/HB 293; Ga. L. 2010, p. 863, § 1/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “Department of Audits and Accounts” was substituted for “Department of Audits” in paragraph (e)(5).

Law reviews. — For article commenting on the 1997 enactment of this Code section, see 14 Ga. St. U.L. Rev. 306 (1997).

CHAPTER 5B

STATE ACCOUNTING OFFICE

Article 1		Sec.	
General Provisions			spect to the state accounting officer.
Sec.		50-5B-5.	Rules and regulations governing travel.
50-5B-1.	Office created; state accounting officer.		
50-5B-2.	Administrative units; directors; employees.	Article 2	
		Office of Comptroller General	
50-5B-3.	Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.	50-5B-20.	Office of the comptroller general; duties.
		50-5B-21.	Deputy comptroller general.
		50-5B-22.	Bound book detailing appropriations.
50-5B-4.	Obligations of state government organizations with re-	50-5B-23.	Annual reporting.
		50-5B-24.	Seal.

ARTICLE 1

GENERAL PROVISIONS

Editor’s notes. — The existing provisions of Chapter 5B were designated as Article 1 by Ga. L. 2012, p. 1089, § 1/SB 343, effective July 1, 2012.

50-5B-1. Office created; state accounting officer.

(a) The State Accounting Office is created and shall be administered by the state accounting officer.

(b) The state accounting officer shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(c) Beginning July 1, 2005, the state accounting officer shall receive an annual salary to be set by the Governor. The state accounting officer shall also be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(d) The state accounting officer shall be required to take and subscribe before the Governor an oath to discharge faithfully and impartially the duties of such office, which oath shall be in addition to the oath required of all civil officers. (Code 1981, § 50-5B-1, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

50-5B-2. Administrative units; directors; employees.

(a) The state accounting officer shall establish such units within the State Accounting Office as he or she deems proper for its administration, including The Council of Superior Court Judges of Georgia and the

Prosecuting Attorneys' Council of the State of Georgia as separate units with distinct accounting functions, and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The state accounting officer shall have the authority, within budgetary limitations, to employ as many persons as he or she deems necessary for the administration of the office and for the discharge of the duties of the office. The state accounting officer shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the office within the limitations of the office's appropriation, the requirements of the state system of personnel administration provided for in Chapter 20 of Title 45, and restrictions set forth by law. (Code 1981, § 50-5B-2, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2008, p. 577, § 21/SB 396; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-100/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "state system of personnel administration provided for in Chapter 20 of Title 45" for "State Personnel Administration" in the last sentence of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-5B-3. Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.

(a) The state accounting officer shall:

(1) Prescribe state-wide accounting policies, procedures, and practices;

(2) Prescribe, develop, operate, and maintain uniform state accounting systems for all state government organizations which facilitate financial accounting and reporting in accordance with generally accepted accounting principles and also meet state and federal accounting and financial reporting requirements;

(3) Prescribe the manner in which disbursements shall be made by state government organizations;

(4) Prescribe and supervise the installation of any changes in the state accounting information systems necessary to secure and main-

tain internal control and facilitate the recording of accounting data for the purpose of preparing reliable, timely, and meaningful statements and reports;

(5) Manage the state's accounting, payroll, and human capital systems;

(6) Using generally accepted accounting principles, prepare the state's financial statements and other reports in accordance with legal requirements;

(7) Provide annual financial statements and other reports to the state auditor and other auditors, as appropriate, for review and certification when required by statute or federal regulation;

(8) Develop interim reports on the financial condition and budgetary compliance of the state and various state organizations;

(9) Determine the proper classification for accounting and reporting purposes of all assets, liabilities, revenues, expenditures, fund balances, funds, and accounts in compliance with legal requirements and generally accepted accounting principles and prescribe a uniform classification of accounts and other accounting identifiers which shall be used by all state organizations;

(10) Develop processes and systems to improve accountability and enhanced collection of accounts receivable due to the state. In developing these processes, the state accounting officer may prescribe procedures to allow for the recognition of uncollectible accounts for financial reporting purposes. He or she may also develop guidelines to allow uncollectible debts to be removed from active collection processes. This recognition shall not remove or diminish the state's claim on accounts or debt owed to the state; and

(11) Develop processes and systems to improve accountability and enhance efficiency for disbursement of funds and management of accounts payable.

(b) The state accounting officer may recommend processes and systems to improve the cash management practices of the state to the State Depository Board. The state accounting officer in cooperation with the Office of the State Treasurer may prescribe policies and procedures to implement the policies of the board. (Code 1981, § 50-5B-3, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2010, p. 863, § 2/SB 296.)

50-5B-4. Obligations of state government organizations with respect to the state accounting officer.

(a) As used in this chapter, the term "organization of state government" shall mean, without limitation, any agency, authority, depart-

ment, institution, board, bureau, commission, committee, office, or instrumentality of the State of Georgia. Such term shall not include any entity of local government, including, but not limited to, a county, municipality, consolidated government, board of education, or local authority, or an instrumentality of any such entity.

(b) All organizations of state government and all officers, agents, and employees thereof shall conform to and comply with the rules, regulations, policies, procedures, and forms devised, promulgated, and installed by the state accounting officer.

(c) All organizations of state government shall submit statements, reports, information, and data necessary to enable the state accounting officer to complete the reports required under this Code section and Code Section 50-5B-3.

(d) All organizations of state government may only create and maintain accounting systems or subsidiary accounting systems that have been approved by the state accounting officer.

(e) All organizations of state government shall provide lease information to the state accounting officer to permit the state accounting officer to properly account for and report all capital and operating leases.

(f) All organizations of state government shall provide information to the state accounting officer necessary to properly account for and report real property and personal property.

(g) All information and reports required in this Code section shall be provided in the form and within the time frame prescribed by the state accounting officer. (Code 1981, § 50-5B-4, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

50-5B-5. Rules and regulations governing travel.

The state accounting officer in cooperation with the Office of Planning and Budget is authorized to and shall adopt rules and regulations governing in-state and out-of-state travel and travel reimbursement that promote economy and efficiency in state government and which treat employees fairly and equitably. (Code 1981, § 50-5B-5, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

ARTICLE 2

OFFICE OF COMPTROLLER GENERAL

Effective date. — This article became effective July 1, 2012.

Administrative rules and regula-

tions. — Comptroller General, Official Compilation of the Rules and Regulations of the State of Georgia, Title 120.

50-5B-20. Office of the comptroller general; duties.

(a) There shall be in the office of the State Accounting Office the office of the comptroller general of the State of Georgia. The state accounting officer shall be the comptroller general.

(b) It shall be the duty of the comptroller general:

(1) To keep an account showing the several appropriations authorized by law, the time when the same are drawn from the treasury, in whose favor they are drawn, and to what fund they are charged;

(2) To examine, check, and countersign all warrants upon the treasury drawn by the Governor, the President of the Senate, and the Speaker of the House of Representatives and to charge the amount thereof to the funds on which they may be respectively drawn prior to their being presented to the Office of the State Treasurer for payment;

(3) To audit all accounts against the state and to allow or reject the same before they are submitted to the Governor;

(4) To see that no draft or warrant shall be countersigned by him or her to be paid out of any appropriated fund after the fund has been exhausted; and, in such case, or in any case of illegal payments from the treasury upon warrants countersigned by the comptroller general, the comptroller general and the state treasurer with all their securities shall be jointly and severally liable upon their several bonds for the repayment of such amounts with all expenses of prosecution to the state;

(5) To receive and keep safely and collect all evidences of debt due to the state from any source other than taxes and to pay over the same to the state treasurer as soon as collected;

(6) To keep a book in which to enter all bonds taken and to file the originals in his or her office;

(7) To have made suitable indexes to the record books in his or her office; and

(8) To certify under his or her official seal at all times when necessary for public use and, on application and payment of his or her legal fees therefor, for private use, copies of any papers kept in his or her office. (Code 1981, § 50-5B-20, enacted by Ga. L. 2012, p. 1089, § 1/SB 343; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

50-5B-21. Deputy comptroller general.

The comptroller general is authorized and directed to designate one of his or her employees as deputy comptroller general. In the event the comptroller general is sick or for any other reason is absent from his or her office for three or more days, the deputy comptroller general shall examine, check, and countersign any warrants during the absence of the comptroller general. (Code 1981, § 50-5B-21, enacted by Ga. L. 2012, p. 1089, § 1/SB 343; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

50-5B-22. Bound book detailing appropriations.

The comptroller general shall keep in his or her office a bound book in which shall be entered in alphabetical order the full amount of all annual appropriations, setting forth the amounts under their several heads; all warrants that he or she may check and pass, together with the fund on which they are drawn and the time, amount, and in whose favor drawn; and all entries necessary for a true exhibit of the finances of the state. (Code 1981, § 50-5B-22, enacted by Ga. L. 2012, p. 1089, § 1/SB 343; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

50-5B-23. Annual reporting.

The comptroller general shall make an annual report to the Governor, which report shall show, from his or her books, a current account of all receipts and payments between the Office of the State Treasurer and the state, including the amount paid on the drafts of the President of the Senate and the Speaker of the House of Representatives as reported to him or her by the Office of the State Treasurer. (Code 1981, § 50-5B-23, enacted by Ga. L. 2012, p. 1089, § 1/SB 343; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

50-5B-24. Seal.

The comptroller general shall have an official seal of such design as he or she shall select with the approval of the Governor. (Code 1981, § 50-5B-24, enacted by Ga. L. 2012, p. 1089, § 1/SB 343; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

CHAPTER 6

DEPARTMENT OF AUDITS AND ACCOUNTS

Article 1		Article 2	
General Provisions		State Auditor	
Sec.		Sec.	
50-6-1.	Creation of department; state auditor as head; qualifications; election procedure; term; vacancy.	50-6-20.	Salary, expenses, duties, bond.
		50-6-21.	Investigation expenses.
50-6-2.	Department to have suitable offices, equipment, and conveniences at state expense.	50-6-22.	Authority to employ officers, assistants.
50-6-3.	Department to audit all state institutions; other auditing agencies not authorized.	50-6-23.	Cooperation with appropriations committees.
50-6-4.	Special examinations, audits, and vulnerability assessments.	50-6-24.	Duties and powers generally.
50-6-5.	Examination of motor fuel and tobacco products distributors.	50-6-25.	Maintenance of statistics on architectural and engineering firms doing business with the state; ineligibility of firms.
50-6-6.	Audit of school and university systems; local boards of education authorized to employ accountants; generally accepted accounting standards; audit report contents’.	50-6-26.	Preparation and publication of forms; duty to use [Repealed].
50-6-7.	State officials to produce books, records, and other papers to the state auditor for examination.	50-6-27.	Annual personnel report; copies for General Assembly; public inspection.
50-6-8.	Chapter does not affect Department of Banking and Finance.	50-6-28.	Investigatory duties generally.
50-6-9.	Inspection of work papers and preliminary drafts of state auditor.	50-6-29.	Power to compel production of evidence.
		50-6-30.	Conducting hearings; assistance of Attorney General.
		50-6-31.	Procedure for contempt of court where summons not obeyed.
		50-6-32.	Short title; definitions; creation, operation, and maintenance of searchable website; public access to state expenditure information.

ARTICLE 1

GENERAL PROVISIONS

50-6-1. Creation of department; state auditor as head; qualifications; election procedure; term; vacancy.

(a) The Department of Audits and Accounts is created and established. The head of the department shall be an experienced auditor and accountant with not less than five years’ experience as an accountant in the Department of Audits and Accounts or in a governmental agency of a similar nature or shall be a duly certified public accountant with at least five years’ practical experience in the duties for which he is certified and who, when named or elected as prescribed in subsection (b)

of this Code section and when qualified, shall be known and designated as state auditor.

(b) The state auditor shall be elected by the General Assembly in the following manner: A joint resolution which shall fix a definite time for the nomination and election of the state auditor may be introduced in either branch of the General Assembly. Upon passage of the resolution by a majority vote of the membership of the Senate and House of Representatives it shall be the duty of the Speaker of the House of Representatives to call for the nomination and election of the state auditor at the time specified in the resolution, at which time the name of the qualified person receiving a majority vote of the membership of the House of Representatives shall be transmitted to the Senate for confirmation. Upon the qualified person's receiving a majority vote of the membership of the Senate, he shall be declared the duly elected state auditor; and the Governor shall be notified of his election by the Secretary of the Senate. The Governor is directed to administer the oath of office to the state auditor and to furnish the state auditor with a properly executed commission of office certifying his election.

(c) The term of office of the state auditor shall continue until a successor is elected as provided in subsection (b) of this Code section. In the event of a vacancy in the position of state auditor at a time when the General Assembly is not in session it shall be the duty of the Governor and he is empowered and directed to appoint a state auditor possessing the qualifications as provided in subsection (a) of this Code section who shall serve as state auditor until the next regular session of the General Assembly, at which time the nomination and election of a state auditor shall be held by the General Assembly as provided in subsection (b) of this Code section. (Ga. L. 1923, Ex. Sess., p. 7, § 1; Code 1933, § 40-1801; Ga. L. 1943, p. 361, § 1; Ga. L. 1945, p. 115, § 1.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-2. Department to have suitable offices, equipment, and conveniences at state expense.

The Department of Audits and Accounts shall be provided with suitable offices at the state capital furnished at the state's expense, as may appear proper and necessary. The department shall be furnished, from time to time, with necessary equipment, furniture, fuel, light, and other proper conveniences for the transaction of the business of the department, the expense of which shall be paid by the state in the same manner as the expenses of other offices at the capital are paid. (Ga. L. 1923, Ex. Sess., p. 7, § 10; Code 1933, § 40-1804.)

50-6-3. Department to audit all state institutions; other auditing agencies not authorized.

The Department of Audits and Accounts shall audit all state institutions. No official of the state shall have authority to employ or hire any other auditing agency. (Ga. L. 1925, p. 256, § 3; Code 1933, § 40-1811.)

OPINIONS OF THE ATTORNEY GENERAL

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be

retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att’y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 245 et seq., 388, 389.

50-6-4. Special examinations, audits, and vulnerability assessments.

The Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require the state auditor to make a special examination into and audit of all the books, records, accounts, vouchers, warrants, bills, and other papers, records, financial transactions, and management of any department, institution, agency, commission, bureau, authority, or office of the state at any time. The state auditor may conduct special examinations and audits which are, without limitation, financial audits (including financial related audits and financial statement audits), compliance audits, performance audits, and vulnerability assessments or reviews. Without limitation, vulnerability assessments or reviews may be made with respect to any electronic financial information systems; other information, management, or operational systems; computers; computer operating and applications software; computing networks; Internet websites; and data processing centers. Tests conducted in connection with such reviews and assessments may include, but are not limited to, penetration testing and network, web, and data base scanning. (Ga. L. 1923, Ex. Sess., p. 7, § 5; Code 1933, § 40-1806; Ga. L. 2002, p. 524, § 1; Ga. L. 2008, p. 522, § 1/SB 300.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-5. Examination of motor fuel and tobacco products distributors.

The state auditor shall, upon the request of either the Governor or the state revenue commissioner, make an examination into and report upon the necessary books, records, and accounts of those persons, firms, and corporations required by law to pay an occupational tax as distributors of motor fuels and also, at the request of the state revenue commissioner, of those persons, firms, and corporations required by law to pay a tax upon the retail sales price of cigarettes, cigars, and loose or smokeless tobacco, as prescribed in Code Section 48-11-2. The examination is to be made at such time as shall be fixed by the state revenue commissioner and for the purpose and to the extent of ascertaining whether or not the tax has been paid and collected as provided by law. (Ga. L. 1923, Ex. Sess., p. 7, § 6; Code 1933, § 40-1807; Ga. L. 2003, p. 665, § 44.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Department of Audits and Accounts is part of executive branch of state government. 1970 Op. Att'y Gen. No. 70-37.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-6. Audit of school and university systems; local boards of education authorized to employ accountants; generally accepted accounting standards; audit report contents'.

(a) It shall be the duty of the Department of Audits and Accounts thoroughly to audit and check the books and accounts of the county superintendents of schools and treasurers of local school systems, of municipal systems, of the several units of the University System of Georgia, and of all other schools receiving state aid and making regular and annual reports to the State School Superintendent, showing the amount received, for what purpose received, and for what purposes

expended. All such funds held by officials must be kept in banks separate from their individual bank accounts.

(b) Notwithstanding any other provisions of this chapter, the local boards of education of the several county, independent, and area public school systems of this state shall be authorized to have an additional audit made of the books, records, and accounts of the public school system over which any such board has jurisdiction. The local boards of education shall be authorized to employ certified public accountants of this state to make the audits and to expend funds for the audits which are received by any such board for educational purposes.

(c) All audits of such public school systems shall be conducted in conformity with generally accepted standards and principles of governmental accounting and auditing and shall be subject to the standards, rules, and ethics promulgated by the Georgia Society of Certified Public Accountants and the American Institute of Certified Public Accountants. The audit report shall include the auditor's unqualified opinion upon the presentation of the financial position and the results of the operations of the public school system which is audited. If the auditor is unable to express an unqualified opinion, he shall so state and shall further detail the reasons for qualification or disclaimer of opinion including recommendations necessary to make possible future unqualified opinions. (Ga. L. 1919, p. 288, § 65; Ga. L. 1931, p. 7, § 96; Code 1933, § 40-1812; Ga. L. 1965, p. 668, § 1; Ga. L. 1994, p. 97, § 50.)

JUDICIAL DECISIONS

Effect of local Act providing for independent audit. — O.C.G.A.

§ 50-6-6(a) imposes a duty upon the Department of Audits and Accounts to conduct an audit of all schools receiving state aid. O.C.G.A. § 50-6-6(b) authorizes local boards of education to have an additional audit. Thus, a local Act which provides for an independent audit does not conflict with the general Act but simply requires the county board to do that which the general Act says it may do. *Glynn County Bd. of Educ. v. Lane*, 261 Ga. 544, 407 S.E.2d 754 (1991).

Separate bank accounts. — Provision of this section that all public funds held by officials must be kept in banks separate from their individual accounts can be understood not as requiring officials to deposit public money in a bank, but as meaning that if the officials so deposit the account must be separate from their individual accounts. It is unlikely

that the legislature by these brief words intended to make all banks public depositories and relieve the officials of responsibility, with no provision for selecting proper banks or taking security from them. *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937).

Agenda of school board is discretionary. — Citizen was not entitled to a writ of mandamus directing a school board to place the citizen on the board's agenda because setting the agenda was a discretionary act that was not subject to mandamus and none of the statutes cited by the citizen, O.C.G.A. §§ 20-2-1160(a), 45-10-1, and 50-6-6(b), imposed a duty on the board to place the citizen on the board's agenda. *James v. Montgomery County Bd. of Educ.*, 283 Ga. 517, 661 S.E.2d 535 (2008).

Cited in *Landrum v. Thomas*, 52 Ga. App. 257, 183 S.E. 140 (1935); *Mathew v. Ellis*, 214 Ga. 665, 107 S.E.2d 181 (1959).

OPINIONS OF THE ATTORNEY GENERAL

This statute on the statute's face is constitutional. 1963-65 Op. Att'y Gen. p. 731.

Audit of noneducational funds. — Language “books, records, and accounts of the public school system over which any such board has jurisdiction” is broad enough to lead a school board to conclude that the board could utilize public school funds to procure a private audit not only of educational funds, but also of all non-educational funds under the board's jurisdiction; however, such use would be unconstitutional by Ga. Const. 1976, Art. IX, Sec. V, Para. I (see Ga. Const. 1983, Art. IX, Sec. IV, Para. II). 1963-65 Op. Att'y Gen. p. 731.

Expenditure of common school funds by local school boards. — Local school boards may expend common school funds to employ certified public accountants to audit the records and accounts of the school system the boards administer. 1976 Op. Att'y Gen. No. 76-72.

Department as part of executive branch. — Department of Audits and Accounts is part of executive branch of state government because the duties of the department are similar to the traditional duties of a state department of audits and relate closely to the executive branch of the government. 1970 Op. Att'y Gen. No. 70-37.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-7. State officials to produce books, records, and other papers to the state auditor for examination.

All officers, agents, employees, departments, institutions, commissions, authorities, and bureaus of the state shall produce and turn over to the state auditor or his or her assistants for examination and audit, whenever demanded by the state auditor, all of their books, records, accounts, vouchers, warrants, bills, and other papers dealing with or reflecting upon the financial transactions and management of such department, institution, agency, commission, authority, bureau, or office, including any and all cash on hand, but not including cash in banks, the amount of cash in banks to be ascertained by certificate furnished to the state auditor by the bank. (Ga. L. 1923, Ex. Sess., p. 7, § 7; Code 1933, § 40-1808; Ga. L. 2005, p. 694, § 5/HB 293; Ga. L. 2008, p. 522, § 2/SB 300.)

OPINIONS OF THE ATTORNEY GENERAL

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be

retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

RESEARCH REFERENCES

ALR. — Construction and application, under state law, of doctrine of “executive privilege,” 10 ALR4th 355.

50-6-8. Chapter does not affect Department of Banking and Finance.

This chapter shall in no way affect the rights, powers, and duties of the Department of Banking and Finance. (Ga. L. 1923, Ex. Sess., p. 7, § 9; Code 1933, § 40-1810.)

50-6-9. Inspection of work papers and preliminary drafts of state auditor.

(a) Work papers and preliminary drafts of reports created in the course of the discharge of duties and powers of the Department of Audits and Accounts and the state auditor shall not be subject to inspection as public records until an audit or special examination is concluded and a report pertaining to those work papers or preliminary drafts is released as a public record, if a report is to be done. If a public request to inspect such documents has been pending for at least six months, the state auditor’s decision not to disclose the documents shall be subject to judicial review in the Superior Court of Fulton County. On judicial review, the state auditor shall have the burden of establishing that the state’s interest in nondisclosure outweighs the public interest in access to the records.

(b) If in performing a vulnerability assessment or review the state auditor determines in his or her discretion that a vulnerability or security deficiency may exist, such findings and related work papers shall not be disclosed publicly or otherwise except as determined by the state auditor. The findings shall not be considered a public record until the state auditor determines no material risk is present from disclosure. Those parts of findings and work papers which identify the methods of the state auditor or which may cause or perpetuate vulnerability shall remain confidential and protected from disclosure until the state auditor otherwise directs. A decision of the state auditor not to disclose documents pursuant to this subsection shall be subject to judicial review in the Superior Court of Fulton County, provided a public request to inspect such documents has been pending for at least six months. The state auditor shall have the burden of establishing that the state’s interest in nondisclosure outweighs the public interest in access to the records. (Code 1981, § 50-6-9, enacted by Ga. L. 2002, p. 524, § 2.)

ARTICLE 2
STATE AUDITOR

50-6-20. Salary, expenses, duties, bond.

The state auditor shall be paid a salary which may be recommended by the Governor and shall be fixed by the Legislative Services Committee created under Code Section 28-4-1 and shall also be reimbursed for all actual and necessary expenses incurred by the state auditor in carrying out his or her official duties. Until the first action of the Legislative Services Committee to fix the salary of the state auditor, the compensation of the state auditor shall continue unchanged. The state auditor shall devote his or her entire time to the performance of the duties of the office of state auditor and shall give bond, to be filed with and approved by the comptroller general, in the sum of \$10,000.00, payable to the Governor and the Governor's successors in office, conditioned that the state auditor shall truly and faithfully perform the duties of the office of state auditor and shall account for all public funds coming into the state auditor's hands or under the state auditor's control, the premium on which bond shall be paid by the state. (Ga. L. 1923, Ex. Sess., p. 7, § 2; Ga. L. 1925, p. 256, § 1; Code 1933, § 40-1802; Ga. L. 1943, p. 361, § 2; Ga. L. 1947, p. 670, § 1; Ga. L. 1999, p. 910, § 7; Ga. L. 2001, p. 783, § 2; Ga. L. 2013, p. 141, § 50/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the last sentence of this Code section.

Cross references. — Official bonds generally, T. 45, C. 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 287, 288.
C.J.S. — 73 C.J.S., Public Administration, §§ 201 et seq., 235 et seq., 245 et seq.

50-6-21. Investigation expenses.

The state auditor is authorized to spend any available money to cover the expenses of investigations and to charge the same to the expenses of his department. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287.
C.J.S. — 73 C.J.S., Public Administra-

tive Law and Procedure, § 153 et seq. 81A
 C.J.S., States, § 201 et seq.

50-6-22. Authority to employ officers, assistants.

The state auditor is authorized and empowered to appoint and employ officers and assistants for the Department of Audits and Accounts, each of whom shall hold office at the discretion of the state auditor. (Ga. L. 1925, p. 256, § 2; Code 1933, § 40-1803.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 288.
C.J.S. — 73 C.J.S., Public Administra-

tive Law and Procedure, § 10 et seq. 81A
 C.J.S., States, § 201 et seq.

50-6-23. Cooperation with appropriations committees.

The state auditor shall cooperate with and shall furnish all information requested by the appropriations committees of the General Assembly. (Ga. L. 1923, Ex. Sess., p. 7, § 8; Code 1933, § 40-1809.)

50-6-24. Duties and powers generally.

The duties and powers of the state auditor shall be as follows:

- (1) Reserved;
- (2) To examine thoroughly all financial transactions of all the state departments, institutions, agencies, commissions, bureaus, authorities, and officers and to keep such accounting records as are necessary to provide and maintain a current check upon the fiscal affairs and transactions of all state departments, institutions, agencies, etc.;
- (3) To examine and audit thoroughly, at least once a year and more frequently if possible, each and all of the books, records, accounts, vouchers, warrants, bills, and all other papers and records of each and every department, institution, agency, commission, bureau, authority, and officer of the state which or who receives funds from the state or which is maintained in whole or in part by public funds, fees, or commissions. Upon the completion of each audit the state auditor shall prepare a complete report of the same in triplicate, one copy of which shall be filed with the official in charge of the department, institution, etc., so examined, one copy of which shall be transmitted to the Governor, and the third copy of which shall be filed in the office of the state auditor as a permanent record and for the use of the press

of the state. In any such report, the state auditor shall call special attention to any illegal, improper, or unnecessary expenditures; all failures to keep records and vouchers required by the law; and all inaccuracies, irregularities, and shortages and shall make specific recommendations for the future avoidance of the same;

(4) To prepare annual and, whenever required, special reports to the Governor and the General Assembly showing the general financial operation and management of each state department, institution, agency, commission, authority, and bureau; showing whether or not the same is being handled in an efficient and economical manner; and calling special attention to any excessive cost of operation or maintenance, any excessive expense, and any excessive price paid for goods, supplies, or labor by any such department, institution, agency, etc.; and

(5) To make special examination into and report of the place and manner in which the funds of the state are kept by the several departments, institutions, agencies, commissions, bureaus, authorities, and officers after the same have been drawn from the state treasury or after the same have been collected and to report who has possession of the same or where the same are deposited, whether the same draw interest, the rate of interest, and whether the same are properly protected by bond, provided that this chapter shall not be construed so as to authorize the state auditor to remove or in any way interfere with any funds so deposited. (Ga. L. 1923, Ex. Sess., p. 7, § 4; Code 1933, § 40-1805; Ga. L. 2005, p. 694, § 6/HB 293; Ga. L. 2008, p. 522, § 3/SB 300.)

Cross references. — Authority of governing bodies to contract with state auditor for purposes of conducting audits of government entities, § 36-81-7. Duty of state auditor to conduct performance au-

ditions of regulatory agencies, § 43-2-4. Reports to state auditor by state agencies regarding professional services fees paid by agencies, § 45-7-70 et seq.

OPINIONS OF THE ATTORNEY GENERAL

State auditor on departmental irregularities. — State auditor must list and call special attention to all irregularities found in examination of department of the state government and to make available for the information of the public, through the press, such transactions and for the further information of the public officials of the state charged with the responsibility of instituting legal action for a violation of the laws of this state. 1950-51 Op. Att’y Gen. p. 358.

Funds derived from extracurricular school activities. — County board of

education cannot expend county education funds for private audit of funds derived from extracurricular school activities; such an expenditure of education funds is not an expenditure for an “educational purpose” within the meaning of such term. 1962 Op. Att’y Gen. p. 155.

Maintaining custody and control of funds in their custody is a proper matter for regulation by local boards of education, and the regulation, supervision, and control of extracurricular activities to include the maintenance of records pertaining thereto and the audit of funds derived

therefrom is a responsibility of the local board of education; should a local board of education desire a private audit of such funds, the expense of obtaining such audit must be paid out of funds derived from such activities. 1962 Op. Att'y Gen. p. 155.

Department as part of executive branch. — Department of Audits and Accounts is part of executive branch of state government because the duties of the department are similar to the traditional duties of a state department of audits and relate closely to the executive

branch of the government. 1970 Op. Att'y Gen. No. 70-37.

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 247.

50-6-25. Maintenance of statistics on architectural and engineering firms doing business with the state; ineligibility of firms.

(a)(1) The state auditor shall maintain statistics on all architectural and engineering firms doing business with the various departments, agencies, authorities, and public corporations of the state, except the Department of Transportation which shall be governed by paragraph (2) of this subsection. The statistics shall show the percentage of the total state business done by each such firm and shall be made available to the General Assembly and all departments, agencies, authorities, and public corporations of the state using architectural and engineering services. The state auditor shall compile the statistics and shall maintain the statistics current on a monthly basis.

(2) The state auditor shall include in the statistics provided for in paragraph (1) of this subsection all architectural and engineering firms doing business with the Department of Transportation. The Department of Transportation shall report its architectural and engineering contracts to the state auditor in two divisions. In the first division, such department shall report those contracts which are under a gross value of \$1 million at the time of execution by the total contract amount without accounting for any subcontracts. In the second division, such department shall report those contracts with a gross value in excess of \$1 million at the time of execution and shall report all subcontracts thereunder which are in excess of \$25,000.00 as further provided for in this Code section. The statistics shall show the total percentage of state business done by each such firm and shall be made available to the General Assembly and the Department of Transportation. The state auditor shall compile the statistics and shall maintain the statistics current on a monthly basis. With respect

to any contract of the Department of Transportation in excess of \$1 million with an architectural or engineering firm which awards a portion of the business in an amount in excess of \$25,000.00 under such contract to one or more subcontractors or joint-venture partners, such department shall report to the state auditor the amount of each subcontractor or joint-venture partner with that portion of the business awarded to such subcontractor or joint-venture partner, and such amounts shall not be listed or included as business of the Department of Transportation awarded to the architectural or engineering firm receiving the state contract. The architectural or engineering firm shall report to the Department of Transportation, as part of its preaward audit conducted by such department, the amount of business in excess of \$25,000.00 under an anticipated contract which the contractor intends to award to any subcontractor or joint-venture partner, and, after verification that the information reported is correct, the Department of Transportation shall furnish such information to the state auditor. The state auditor shall revise the statistics with respect to architectural and engineering firms currently doing business with the Department of Transportation with respect to contracts outstanding on April 19, 1995, under which all services have not been performed by such architectural and engineering firms in satisfaction of the contract. Such revised statistics shall be computed in accordance with the provisions of this subsection crediting subcontractors and joint-venture partners with business awarded to them and providing that such amounts credited shall not be listed or included as business of the state awarded to the architectural or engineering firm receiving the state contract. Such revised statistics shall be provided by the contractor within 60 days of April 19, 1995, and, after such time, the state auditor shall not be required to revise such statistics.

(b) Any architectural or engineering firm which has received more than 10 percent of the total awarded for such services by the departments, agencies, authorities, and public corporations of the state during any period of 36 months, as calculated pursuant to the provisions of subsection (a) of this Code section and shown by the statistics of the state auditor, shall be ineligible to contract with any department, agency, authority, or public corporation of the state until the firm, during any period of 36 months, has been awarded less than 10 percent of the total awarded for such services; provided, however, that any architectural or engineering firm may contract with the Department of Transportation for not more than 30 percent of the total awarded for such services, 10 percent for transportation purposes, and 20 percent for tollway purposes. (Ga. L. 1970, p. 420; Ga. L. 1971, p. 811, § 1; Ga. L. 1973, p. 640, § 1; Ga. L. 1995, p. 912, § 1; Ga. L. 2008, p. 522, § 4/SB 300.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “April 19, 1995,” was substituted for “the effective

date of this Code section” in two places in paragraph (a)(2).

OPINIONS OF THE ATTORNEY GENERAL

Legislation required to allow Department of Transportation to exceed limitations on professional services contracts. — While the provisions of former O.C.G.A. § 32-7-73 did not apply to contracts for professional services which were governed by O.C.G.A. § 50-22-1 et seq., legislation is required to allow the Department of Transportation to exceed the limitations on such professional services contracts found in O.C.G.A. § 50-6-25(b). 1994 Op. Att’y Gen. No. U94-14.

Interaction between 10% threshold and 30% limit. — Architectural or engineering firm which is awarded fees for such services from the state is ineligible for further state-general

contracts when it exceeds the 10% threshold, but may still contract with the Department of Transportation (DOT) for a maximum of 30% of the total amount awarded, with maximum limits of 10% for DOT-Transportation and 20% for DOT-Tollway. 1992 Op. Att’y Gen. No. 92-35.

Architectural or engineering firms may be considered single firm. — In applying the eligibility requirements for doing business with the state contained in O.C.G.A. § 50-6-25, architectural or engineering firms with a commonality of interest may, under certain circumstances, be considered as a single “firm.” 1992 Op. Att’y Gen. No. 92-30.

50-6-26. Preparation and publication of forms; duty to use.

Reserved. Repealed by Ga. L. 2005, p. 694, § 7/HB 293, effective July 1, 2005.

Editor’s notes. — This Code section 1933, § 40-1813; Ga. L. 1984, p. 1004, was based on Ga. L. 1931, p. 7, § 7; Code § 1.

50-6-27. Annual personnel report; copies for General Assembly; public inspection.

The state auditor shall prepare each year a report showing the entire personnel of every office, institution, board, department, and commission in the executive department of the state government, of every state authority, of every university or college in the University System of Georgia, and of every local board of education. The report shall list the name, title or functional area, salary, and travel expense incurred by each such individual, which information shall be allocated to the respective office, institution, board, department, commission, authority, university, college, or local board of education affected. The report shall be kept in the state auditor’s office and shall be available for public inspection during regular business hours. Copies of the report or portions of the report shall be made available on request and posted online in a searchable data base. Each office, institution, board, department, commission, authority, university, college, and local board of education is required and directed to submit to the state auditor, in

a format prescribed by the state auditor, a listing of all personnel of such office, institution, board, department, commission, authority, university, college, or local board of education showing name, title or functional area, salary, and travel expense for each individual. The state auditor shall furnish each member of the General Assembly a card or form so that a copy of such report may be requested by any member who desires one. (Ga. L. 1931, p. 7, § 8; Code 1933, § 40-1814; Ga. L. 1978, p. 220, § 1; Ga. L. 1985, p. 668, § 1; Ga. L. 1995, p. 363, § 1; Ga. L. 2008, p. 522, § 5/SB 300.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 247.

50-6-28. Investigatory duties generally.

It shall be the duty of the state auditor to make an investigation as a part of his audit of each and every department of the state government. When there are facts, records, circumstances, or information that indicate mismanagement or misconduct on the part of any official or employee of any department of the state government during either a past or present administration, it shall be the duty of the state auditor to make the full investigation, as provided in Code Section 50-6-29, of the department, official, or employee. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 153 et seq.

50-6-29. Power to compel production of evidence.

For the purpose of more completely discharging the duties resting upon him or her and to discover the truth and to make his or her reports truthful in all matters handled by him or her, the state auditor is empowered to conduct hearings, to summon witnesses, to administer oaths, to take the testimony of such witnesses, and to compel the production, inspection, and copying of documentary evidence, including without limitation evidence in electronic form and documentary evidence that is confidential or not available to the general public, at such time and place as he or she may designate for the purpose of investigating and determining the conduct and record of the employees and officials of any department of the state government. Notwithstanding any other provision of law, the state auditor shall have access to inspect, compel production of, and copy confidential information in any form unless the law making such information confidential expressly refers to

this Code section and qualifies or supersedes it in that particular instance. When the audit or special examination of the state auditor is concluded, the Department of Audits and Accounts shall redact, destroy, or return to the custodial agency all confidential information except that information which the state auditor determines is necessary to retain for audit purposes or to disclose for other public purposes. For audit purposes, the state auditor may retain such confidential information in working papers as is minimally necessary to support findings and to comply with generally accepted governmental auditing standards. The state auditor may also disclose confidential information to other officers independently entitled to its receipt, such as for law enforcement purposes. Except as stated above in this Code section, confidential information in the hands of the state auditor shall have the same confidential status as it does in the hands of the custodial entity, and the state auditor shall protect its confidentiality with at least the care and procedures by which it is protected by the custodial agency or substantially equivalent care and procedures. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 2002, p. 524, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 34 et seq. Administrative Law and Procedure, §§ 145, 147. 81A C.J.S., States, § 226 et seq.

C.J.S. — 73 C.J.S., Public Administra-

50-6-30. Conducting hearings; assistance of Attorney General.

A hearing as provided in Code Section 50-6-29 shall be held in the county where the department or institution being investigated is located and may be presided over by the state auditor. The state auditor shall, at any time when he or she deems necessary, request of the Governor, Lieutenant Governor, or Speaker of the House of Representatives legal assistance in conducting the investigation. Upon such request, the Governor shall designate the Attorney General, his or her assistants, or any special assistant attorney general for the purpose of assisting the state auditor in the prosecution of the investigation. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 2008, p. 522, § 6/SB 300.)

50-6-31. Procedure for contempt of court where summons not obeyed.

In the event any witness summoned to appear in person or to produce documents fails or refuses to respond to such summons, it shall be the duty of the state auditor to certify the fact of refusal to a judge of the superior court of the county wherein such witness was required and directed to appear for the purpose of giving testimony or producing

documentary evidence, which judge shall issue immediately an order to the party commanding him to appear immediately before the state auditor for the purpose of giving testimony or producing documentary evidence as directed in the notice or summons given by the state auditor. In the event of failure to respond to the summons of the court, the party shall be guilty of contempt of that court and shall be dealt with by the court accordingly. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 1982, p. 3, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “the court” in the last sentence.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 144, 159 et seq. 81A C.J.S., State, §§ 226, 227.

50-6-32. Short title; definitions; creation, operation, and maintenance of searchable website; public access to state expenditure information.

(a) This Code section shall be known and may be cited as the “Transparency in Government Act.”

(b) As used in this Code section, the term:

(1) “Agency” means:

(A) Each department, commission, authority, and agency of state government;

(B) The Board of Regents of the University System of Georgia;

(C) Any regional educational service agency;

(D) The General Assembly, including all legislative offices and agencies; and

(E) Local boards of education.

(2) “Department” means the Department of Audits and Accounts.

(3) “Searchable website” means a single website that allows the public to review and analyze information identified in subsection (c) of this Code section.

(c)(1) The department shall develop and operate a searchable website accessible by the public, at no cost, that provides the following information pertaining to state fiscal year 2008 and each state fiscal year thereafter:

(A) The State of Georgia Comprehensive Annual Financial Report that includes an indexed statement of operations and a

statement of financial condition of the state in accordance with governmental generally acceptable accounting principles;

(B) The annual Budgetary Compliance Report for the state that provides, by agency, an indexed report comparing budgeted and actual revenues and expenditures by budgetary units for each organization included in the General Appropriations Act, as amended. Such report shall include, at a minimum, a statement of the taxes and other revenues remitted to the state treasury and operating revenues retained by the agency during the immediately preceding fiscal year as well as a statement of total expenditures made by the agency during the immediately preceding fiscal year;

(C) The annual State of Georgia Single Audit Report that provides, by federal grant, an indexed listing of all expenditures of federal funds and also discloses by state organization any audit findings and corrective actions to be taken;

(D) Salaries and expenses of full-time and part-time employees and board members;

(E) A list of consultant expenses and other professional services expenses;

(F) State Budget in Brief, indexed by reporting agency;

(G) All performance audits conducted by the department for the preceding five years; and

(H) An indexed listing of all agencies and end users receiving any federal pass-through moneys and an itemized enumeration of the expenditure of such moneys.

(2) As soon as is practical after the close of each fiscal year, the department shall update the searchable website for such fiscal year to include the information set forth in paragraph (1) of this subsection.

(d)(1) The department shall develop and add to the searchable website a report of certain grant and contract payments made or due to vendors by agencies reporting through the state's general financial accounting and information system and all payments made through economic and incentive programs operated by the Department of Economic Development, the Department of Labor, the Department of Community Affairs, the Department of Agriculture, and the Georgia Lottery Corporation pertaining to state fiscal year 2009 and each state fiscal year thereafter. Such report shall include, at a minimum:

(A) A list of all obligations entered into by the agency during the immediately preceding fiscal year which call for the agency to expend at any time in the aggregate more than \$50,000.00; and

(B) A list of the names of each person, firm, or corporation that has received from the agency during the immediately preceding fiscal year payments in excess of \$20,000.00 in the aggregate, including the amount paid to such person, firm, or corporation during such period.

(2) As soon as is practical after the close of each fiscal year, the department shall update the searchable website for such fiscal year to include the information set forth in this subsection.

(3) Offices of the judicial branch shall provide the information required by agencies under this subsection.

(e) All agencies shall provide to the Department of Audits and Accounts such information as is necessary to accomplish the purposes of this Code section.

(f) Nothing in this Code section shall require the disclosure of information which is considered confidential by state or federal law.

(g) Each local board of education subject to Code Section 48-8-141 shall provide the information required under that Code section to the department for posting on the searchable website. (Code 1981, § 50-6-32, enacted by Ga. L. 2008, p. 522, § 7/SB 300; Ga. L. 2010, p. 906, § 2/HB 1013; Ga. L. 2010, p. 1253, § 1/SB 389.)

Code Commission notes. — The amendment to paragraph (b)(1) of this Code section by Ga. L. 2010, p. 906, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1253, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

CHAPTER 7

DEPARTMENT OF ECONOMIC DEVELOPMENT

Article 1

General Provisions

- Sec.
 50-7-1. Creation of department.
 50-7-2. Commissioner as head of department; appointment and compensation; assistant commissioner; travel expenses.
 50-7-3. Creation of board; composition; terms; vacancies; intergovernmental contracts and agreements.
 50-7-4. Policy-making function of board.
 50-7-5. Compensation and expenses of board members.
 50-7-6. Operational procedures for board meetings.
 50-7-7. Duties and powers of board generally.
 50-7-8. Additional duties and powers of board.
 50-7-9. Duty of board to make recommendations to Governor and General Assembly concerning improvement of business conditions.
 50-7-10. Authorization for board to accept grants and gifts.
 50-7-11. Use by board of accepted grants or gifts.
 50-7-11.1. Authority to administer and disperse funds.
 50-7-12. Welcome centers authorized; department to construct, operate, and maintain centers; installation and operation of vending machines, automated teller machines, and cash-dispensing machines.
 50-7-13. Revenue from vending machine sales to offset maintenance costs.
 50-7-14. Tourist center within vicinity of domestic residence of state citizen elected President.
 50-7-15. Expenditures for meals and expenses of persons seeking to

Sec.

- locate business, industry, or tourist facilities in state.
 50-7-16. Definitions; acquisition of property by Department of Economic Development.
 50-7-17. Tourism Marketing Program and Tourism Foundation.
 50-7-18. Disposition of assets of the Georgia Golf Hall of Fame.

Article 2

Promotion of Marine Research and Industrial Activities

- 50-7-30. Purpose of article; authority of department.

Article 3

Geo. L. Smith II Georgia World Congress Center

- 50-7-40. Construction, operation, and improvement of project.
 50-7-41. Lease of property to authority.

Article 4

Georgia International and Maritime Trade Center

- 50-7-50. Definitions.
 50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.

Article 5

Civil War Commission

- 50-7-60. Civil War Commission created.
 50-7-61. Duties and powers of Civil War Commission.
 50-7-62. Commission assigned to Department of Economic Development for administrative purposes only.
 50-7-63. Acquisition of lands within boundaries of Civil War battlefields for public access; maintenance, protection, and interpretation of sites.
 50-7-64. Appointment of commission.

Article 6

Agricultural Tourist Attractions

Sec.
50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

Article 7

Goods and Products Manufactured in Georgia

Sec.
50-7-80. Legislative findings; creation of “Made in Georgia” program.

Editor’s notes. — Ga. L. 1989, p. 1641, which amended this chapter, provides in § 18, not codified by the General Assembly, that: “In the event of any substantive conflict between this Act and any other

Act of the 1989 General Assembly, such other Act shall control over this Act.”

Cross references. — Official Gardens and Nature Centers, § 12-3-640.

ARTICLE 1

GENERAL PROVISIONS

50-7-1. Creation of department.

There is created as a part of the executive branch of the state government the Department of Economic Development. (Ga. L. 1949, p. 249, § 1; Ga. L. 1962, p. 694, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 29.)

Cross references. — Georgia Tourism Development Act, T. 48, C. 8, A. 5.

OPINIONS OF THE ATTORNEY GENERAL

Continuation of former offices and positions under merit system. — All of the offices and positions of employment within the former Department of Commerce which were brought under the merit system continued under the merit system under its successor, the Department of Industry and Trade (now the Department of Industry, Trade, and Tour-

ism); with the exception of the director and the members of the Board of Commissioners, the board must hire and terminate all personnel subject to the rules and regulations of the State Personnel Board. 1967 Op. Att’y Gen. No. 67-151 (opinion rendered prior to Executive Reorganization Act of 1972 and its progeny).

50-7-2. Commissioner as head of department; appointment and compensation; assistant commissioner; travel expenses.

There is created the office of commissioner of economic development, who shall be executive officer and administrative head of the department. The commissioner shall be appointed by and serve at the pleasure of the Board of Economic Development. The compensation of the commissioner shall be fixed by the board. The commissioner shall

assist the board in the performance of its duties, powers, authority, and jurisdiction as the board shall provide. The commissioner shall receive expenses, including mileage, as do other state officials and employees. The board is authorized to designate an assistant commissioner and such other employees as are necessary to carry out and effectuate this chapter. The commissioner is further authorized and empowered to reimburse authorized personnel of the department for the actual cost incurred in the pursuit of official business for all meals, taxis, parking, and the rental of automobiles when the use of such vehicles is less expensive or more efficient than other commercial transportation. (Ga. L. 1959, p. 262, §§ 5, 13; Ga. L. 1962, p. 694, § 6; Ga. L. 1964, p. 181, § 1; Ga. L. 1968, p. 130, § 13; Ga. L. 1968, p. 1411, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 30.)

Cross references. — Reimbursement of expenses of state employees generally, § 45-7-20 et seq.

50-7-3. Creation of board; composition; terms; vacancies; inter-governmental contracts and agreements.

(a) The department shall be under the direction and supervision of a Board of Economic Development.

(b) On and after July 1, 1999, the Board of Economic Development shall consist of one member from each congressional district in the state and nine additional members from the state at large. All members shall be appointed by the Governor, subject to confirmation by the Senate. The initial terms of members shall be as follows: two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2000; two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2001; three members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 2002; two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2003; and two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2004. Thereafter, all members appointed to the board by the Governor shall be appointed for terms of five years and until their successors are appointed and qualified. In the event of a vacancy during the term of any member by reason of death, resignation, or otherwise, the appointment of a successor by the Governor shall be for the remainder of the unexpired term of such member.

(c) The first members appointed under this Code section shall be appointed for terms which begin July 1, 1999. The members of the

Board of Economic Development serving on April 1, 1999, shall remain in office until their successors are appointed and qualified.

(d) In addition to all other powers granted to the Board of Economic Development under this chapter, the board may authorize the Department of Economic Development to enter into and carry out intergovernmental contracts and agreements for the purpose of providing financial and other assistance in carrying out projects or undertakings which will further the public purposes of development of trade, commerce, industry, and employment opportunities at the state and local levels. The board may authorize such contracts and agreements between the department and other departments, agencies, and entities of state government and may also authorize such contracts and agreements between the department and local development authorities. Any such contracts and agreements shall be awarded pursuant to criteria and procedures developed by the board. Such criteria and procedures shall be designed to effectuate those proposed contracts and agreements which will be most effective in furthering the public purpose of development of trade, commerce, industry, and employment opportunities at the state and local levels. Neither the development of such criteria nor the award of such contracts and agreements shall be subject to Chapter 5 of this title; Chapter 13 of this title; or Article 5 of Chapter 5 of Title 28. The board and the department may expend funds appropriated or otherwise available to the board and the department for the public purposes described in this subsection. (Ga. L. 1949, p. 249, § 2; Ga. L. 1959, p. 262, § 1; Ga. L. 1962, p. 694, § 2; Ga. L. 1983, p. 504, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 1999, p. 1041, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2004, p. 690, § 31.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “this title” was substituted for “Title 50” in two places in subsection (d).

OPINIONS OF THE ATTORNEY GENERAL

Board member not ineligible to run for county office. — One’s status as a member of the board of the department will not affect a member’s eligibility to run for county office. 1968 Op. Att’y Gen. No. 68-14.

Presumption of resignation raised by absence from meetings. — Board may include in the board’s by-laws a pro-

vision specifying that any board member missing three or more consecutive meetings without discussing the reason for the absence with the chairperson will be presumed to have resigned and that the chairperson will notify the Governor of the resignation. 1991 Op. Att’y Gen. No. 91-18.

50-7-4. Policy-making function of board.

The board shall be the policy-determining body for the department and shall have the duties, powers, authority, and jurisdiction provided in this chapter. (Ga. L. 1949, p. 249, § 2; Ga. L. 1959, p. 262, § 1; Ga.

L. 1962, p. 694, § 2; Code 1981, § 50-7-3; Code 1981, § 50-7-4, enacted by Ga. L. 1983, p. 504, § 2; Ga. L. 1989, p. 1641, § 14.)

50-7-5. Compensation and expenses of board members.

The members of the board shall receive no compensation for their services but shall be entitled to receive actual expenses incurred by them in the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees. (Ga. L. 1959, p. 262, §§ 3, 11; Ga. L. 1962, p. 694, § 4; Ga. L. 1989, p. 1641, § 14.)

Cross references. — Reimbursement of expenses of state employees generally, § 45-7-20 et seq.

50-7-6. Operational procedures for board meetings.

The board shall adopt procedures for its own operation and for the transaction of business including, but not limited to, setting a quorum for meetings and for the transaction of business; setting meeting dates, times, and places; and calling meetings. (Ga. L. 1959, p. 262, §§ 4, 12; Ga. L. 1962, p. 694, § 5; Ga. L. 1989, p. 1641, § 14.)

50-7-7. Duties and powers of board generally.

The board shall have the following duties and powers:

(1) To investigate, study, and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Georgia business, industry, and commerce within and outside the state;

(2) To make and prepare plans and establish long-term policies for the promotion, establishment, development, and expansion of commerce and industry in the state;

(3) To promote and encourage the location, establishment, and development of new businesses and industries within the state and the development and expansion of businesses and industries now or hereafter located in the state;

(4) To promote and encourage the establishment, maintenance, development, and expansion of markets for the products of Georgia business, industry, and agriculture;

(5) To promote and encourage the use of the commercial, industrial, and agricultural facilities and resources of the state by persons, businesses, and industries located within or outside the state; and

particularly to promote and encourage the expansion and development of industries processing or using agricultural, timber, timber products, and natural resources of the state;

(6) To establish, develop, and maintain an effective business information service, both for the direct assistance of business and industry of the state and for the encouragement of industries outside the state to use commercial, industrial, and agricultural facilities within the state;

(7) To promote and encourage the establishment, development, and maintenance of commerce and trade between this state and other states and foreign countries; to plan for the removal of, and to devise and put into operation ways and means of removing, trade barriers of any kind which in any way hamper, burden, restrict, or interfere with the free flow of commerce and trade between this state and other states; and

(8) To plan and conduct a program of information and publicity designed to attract tourists, visitors, and other interested persons from outside the state to this state and also to encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state for the same purposes. (Ga. L. 1949, p. 249, § 14; Ga. L. 1959, p. 262, § 15; Ga. L. 1962, p. 694, § 7; Ga. L. 1989, p. 1641, § 14.)

Cross references. — Powers and duties of State Board of Education relating to vocational education generally, T. 20, C.

4. Conducting of industrial research by Georgia Tech Research Institute, T. 20, C. 11.

OPINIONS OF THE ATTORNEY GENERAL

Department is authorized to conduct labor availability study for a city and may do so with money the department receives from the Governor's emergency fund. 1969 Op. Att'y Gen. No. 69-389.

Limits on assistance in acquisition of industrial park. — While the Department of Community Development (now Department of Industry, Trade, and Tourism) is authorized to "coordinate, counsel and advise" with local governmental agencies as well as other public or private organizations in their promotional and planning activities, the department is unauthorized to spend state funds to assist a county development authority to acquire property for an industrial park. 1974 Op. Att'y Gen. No. 74-11.

Authorization to contract for installation of signs. — Contract for the installation of "highway welcome signs" to be erected on the Georgia side of the state line on state road rights of way where the various highways enter the state is authorized. 1963-65 Op. Att'y Gen. p. 280.

Purchasing of gifts for representatives of industries. — Purchase of cuff links and the decorative attachment to key rings designed in the shape of this state for controlled distribution to representatives of industries which the department is attempting to encourage to locate or expand operations in Georgia is authorized by this section and is not repugnant to Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) since the elements of

gratuity are merely incidental to their dominant function of advertising and promotion. 1963-65 Op. Att'y Gen. p. 558.

50-7-8. Additional duties and powers of board.

The board shall also have the following duties and powers:

- (1) To conduct and make such surveys and investigations, to gather and compile such information, and to make and prepare such reports, plans, and maps as may be necessary or proper effectually to discharge the duties and exercise the powers of the board enumerated in this article;
- (2) To engage in and promote and encourage research designed to further new and more extensive uses of the agricultural and natural resources or other products or resources of the state and designed to develop new products and industrial processes;
- (3) To study trends and developments in business, industry, and agriculture in the state and analyze such trends and developments and the reasons therefor; to study costs and other factors underlying the successful operation of businesses and industries in the state; and to make recommendations regarding circumstances promoting or hampering industrial or agricultural development;
- (4) To collect, compile, and publish in print or electronically periodically a census of business and industry in the state with the cooperation of other agencies, and to analyze and publish in print or electronically information relating to current conditions of business, industry, and agriculture in the state;
- (5) To compile, publish in print or electronically, and make available for distribution to interested persons the results of any and all studies, surveys, and investigations; any and all information gathered; and any and all reports made and plans and maps prepared;
- (6) To coordinate any of its activities, efforts, or functions with those of any other agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or functions similar to those of the board, and to cooperate, counsel, and advise with such agencies;
- (7) To cooperate, counsel, and advise with and to encourage and promote coordination in the efforts of other organizations or groups within the state, public or private, engaged in publicizing the advantages, attractions, or resources of the state;
- (8) To cooperate, counsel, and advise with municipal, county, regional, or other local planning agencies in the state for the purpose

of promoting coordination between the state and localities as to plans, policies, development of commerce, industry, or agriculture, publicity, and other related activities and functions;

(9) To solicit and receive gifts, donations, or contributions from any person, firm, or corporation in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board;

(10) To authorize the Department of Economic Development in accordance with all applicable state laws to contract and make cooperative agreements, contracts, and rental agreements with the United States government; any county, municipality, or local government or any combination thereof; any public or private corporation or firm; any persons whatsoever; or any public authority, agency, commission, or institution, including agencies of state government for any of the services, purposes, duties, responsibilities, or functions vested in the board;

(11) To authorize the Department of Economic Development to participate with public and private groups, organizations, and businesses in joint marketing projects that promote the economic and tourist development of the State of Georgia and make efficient use of state appropriated marketing funds. In connection with such projects, the department may receive supplies, materials, equipment, services, and other personal property and intangible benefits. It may also issue licenses to others for the use of property in its custody or control, including intellectual property and other personal property, but may not become a joint owner. In acquisitions under this paragraph, the department shall be exempt from the provisions of Chapters 5 and 25 of this title. By way of illustration and not limitation, the department may allow the use of its logo in advertising and on uniforms provided by cooperating entities for wear by department employees. The board shall adopt and amend its policies, regulations, rules, and procedures as necessary to implement this provision and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act," in doing so. In this paragraph, "marketing" means promotion, advertising, signage, public relations, press relations, branding, and use of a "look"; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood. The department will utilize competitive procedures and the Georgia Registry whenever in its reasonable discretion it is in the best interest of the state to do so. The Georgia Technology Authority will retain its authority over technology but will defer to the department in matters of marketing of economic development and implementation in such overlapping areas as creation of kiosks and web page design and operation. The

Department of Administrative Services will retain its authority over purchasing in areas not peculiarly germane to marketing implementation, such as printing and shipping, but will defer to the department in matters of marketing of economic development and implementation in overlapping areas;

(12) To assist the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in the administration and performance of the Georgia Music Hall of Fame Authority's duties, powers, responsibilities, and functions as provided in Part 10 of Article 7 of Chapter 3 of Title 12;

(13) To enter into contracts with the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in assisting the Georgia Music Hall of Fame Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Music Hall of Fame Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Music Hall of Fame Authority, including the provision for joint or complementary services, within the scope of their respective powers; and

(14) To induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform the agency or authority's statutory functions. (Ga. L. 1949, p. 249, § 15; Ga. L. 1959, p. 262, §§ 16-18; Ga. L. 1962, p. 694, § 8; Ga. L. 1985, p. 428, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 684, § 1; Ga. L. 2004, p. 690, § 32; Ga. L. 2005, p. 306, §§ 2, 3/SB 125; Ga. L. 2010, p. 838, § 10/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "paragraph" was substituted for "subsection" in paragraph (11).

OPINIONS OF THE ATTORNEY GENERAL

Limited assistance to localities. — While the department is authorized to "coordinate, counsel, and advise" with local governmental agencies as well as other public or private organizations in their promotional and planning activities, the department is unauthorized to spend state funds to assist a county development authority to acquire property for an industrial park. 1974 Op. Att'y Gen. No. 74-11.

Joint advertising effort between the Department of Industry, Trade, and Tourism and a private industry is within the powers conferred upon the department by the General Assembly under O.C.G.A. § 50-7-8, provided that the department receives or has received the appropriate authorization from the Board of Industry, Trade, and Tourism. 1989 Op. Att'y Gen. No. 89-59.

RESEARCH REFERENCES

ALR. — Applicability of state anti-trust act to interstate transaction, 24 ALR 787.

50-7-9. Duty of board to make recommendations to Governor and General Assembly concerning improvement of business conditions.

The board shall make, from time to time, written recommendations to the Governor and to the General Assembly concerning the improvement of conditions under which business, industry, and agriculture are carried on in the state and the elimination of any restrictions or burdens imposed by law or otherwise which adversely affect or retard the legitimate development and expansion of commerce, business, industry, trade, or agriculture in the state. (Ga. L. 1949, p. 249, § 16; Ga. L. 1959, p. 262, § 19; Ga. L. 1962, p. 694, § 9; Ga. L. 1989, p. 1641, § 14.)

50-7-10. Authorization for board to accept grants and gifts.

The board may accept grants and gifts from the federal government; the state government; any county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organization, public or private; and any individual or groups of individuals. (Ga. L. 1949, p. 249, § 17; Ga. L. 1959, p. 262, § 20; Ga. L. 1962, p. 694, § 10; Ga. L. 1989, p. 1641, § 14.)

OPINIONS OF THE ATTORNEY GENERAL

Use of grant to build airport radio beacon. — Although the department may lawfully accept a grant from the Governor's emergency fund, such grant may not

be utilized, by contract or otherwise, for the purpose of constructing a radio beacon at the Vidalia Municipal Airport. 1967 Op. Att'y Gen. No. 67-322.

50-7-11. Use by board of accepted grants or gifts.

All funds received by the board from grants or gifts made to and accepted by the board pursuant to Code Section 50-7-10 shall be used by the board to pay the expenses and costs of the operation of the department. (Ga. L. 1949, p. 249, § 18; Ga. L. 1950, p. 182, § 3; Ga. L. 1959, p. 262, § 21; Ga. L. 1962, p. 694, § 11; Ga. L. 1989, p. 1641, § 14.)

50-7-11.1. Authority to administer and disperse funds.

In the event the board accepts grants and gifts from the federal government pursuant to Code Section 50-7-10, the board shall also have the authority to administer and disperse those funds for any and all

purposes of this article in a manner consistent with the terms of the grant or gift and other applicable laws, the provisions of Code Section 50-7-11 notwithstanding. (Code 1981, § 50-7-11.1, enacted by Ga. L. 2013, p. 685, § 2/SB 177.)

Effective date. — This Code section became effective July 1, 2013.

50-7-12. Welcome centers authorized; department to construct, operate, and maintain centers; installation and operation of vending machines, automated teller machines, and cash-dispensing machines.

(a) The Governor shall have authority to direct and provide for the construction of welcome centers at or near the point of entrance into this state of any federal highway. The Department of Transportation may exercise the power of eminent domain in acquiring fee simple title to suitable locations for the erection of such welcome centers. Any welcome center acquired prior to April 23, 1969, may be maintained and improved, regardless of whether the fee simple title therefor is in the state.

(b) It shall be the duty of the Department of Economic Development to construct, operate, and maintain the welcome centers and keep them supplied with such information, pamphlets, and other materials as will advertise and publicize the tourist attractions, natural resources, industry, history, and commerce of this state.

(c) The Department of Economic Development, with the concurrence of the Department of Transportation, is further authorized to install or provide for the installation of and to operate or provide for the operation of vending machines and to sell in such machines nonalcoholic beverages, snacks, candy, cigarettes, and other articles as determined by the Department of Economic Development to be necessary or desirable for the traveling public at reasonable prices. The prices charged for these products will approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise, such prices to be set by the Department of Economic Development. The Department of Economic Development is also authorized to provide for the sale or free distribution of articles and merchandise at the welcome centers in such manner as is deemed to be in the best interest of promoting the tourist trade in this state.

(d) The Department of Economic Development, with the concurrence of the Department of Transportation, is authorized to provide for the installation and operation at welcome centers of automated teller machines and cash-dispensing machines. If so authorized, such machines shall be established, placed, and operated in accordance with

applicable law. Such machines shall be placed in welcome centers upon such terms and conditions as shall be deemed by the Department of Economic Development to be in the best interest of the state and the traveling public. (Ga. L. 1951, p. 747, §§ 1, 2; Ga. L. 1953, Nov.-Dec. Sess., p. 185, §§ 2-6; Ga. L. 1960, p. 1097, § 1; Ga. L. 1969, p. 610, §§ 1-3; Ga. L. 1979, p. 132, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 1995, p. 416, § 1; Ga. L. 2004, p. 690, § 33.)

Cross references. — Seizure of vending machines containing cigarettes or cigars upon which tax has not been paid, § 48-11-9.

OPINIONS OF THE ATTORNEY GENERAL

Departmental duty to preserve and be responsible for upkeep of actual building which comprises welcome center; whereas, it will be the correlative duty of the Department of Transportation to preserve and keep the surrounding grounds in their originally constructed condition. 1969 Op. Att’y Gen. No. 69-332.

Discount coupons to tourist attractions. — Department may print and distribute a booklet of coupons entitling the holder to discounts at various tourist attractions in this state. 1970 Op. Att’y Gen. No. 70-81.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 111 ALR 755; 151 ALR 1195.

50-7-13. Revenue from vending machine sales to offset maintenance costs.

Notwithstanding any provision to the contrary, all net revenue derived from the sale of nonalcoholic beverages, snacks, candy, cigarettes, and other articles from vending machines at welcome centers and tourist centers shall be utilized by the Department of Economic Development to offset the cost of maintenance of all welcome centers and tourist centers and litter pickup in these areas. Notwithstanding any provision to the contrary, all net revenue derived from the sale of nonalcoholic beverages, snacks, candy, cigarettes, and other articles from vending machines at safety rest areas shall be utilized by the Department of Transportation to offset the cost of maintenance of all safety rest areas and litter pickup in these areas. (Ga. L. 1979, p. 132, § 7; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 34.)

Cross references. — Seizure of vending machines containing cigarettes or cigars upon which tax has not been paid, § 48-11-9.

50-7-14. Tourist center within vicinity of domestic residence of state citizen elected President.

(a) The Governor shall have authority to direct and provide for the construction of a tourist center on real property owned by or which may be acquired by the state within the general vicinity or area of the domestic residence of any citizen of this state when such citizen has been elected President of the United States and the Governor determines that the number of tourists and other persons visiting the area justifies the center.

(b) It shall be the duty of the Department of Economic Development to construct, operate, and maintain the tourist center and keep it supplied with such information, pamphlets, and other materials as will advertise and publicize the tourist attractions, natural resources, industry, history, and commerce of this state.

(c) The Department of Economic Development is further authorized to provide space for other commercial or noncommercial projects in the center and allow the persons to sell or provide such articles or services as may be prescribed in the lease, contract, franchise, or other arrangement, as determined by the department. The Department of Economic Development shall regulate the sale or free distribution of such articles, merchandise, and services by other persons at the center in the manner it deems to be in the best interest of promoting tourist trade in this state and otherwise furthering the purposes for which the center is created. The Department of Economic Development is further authorized to install or provide for the installation of and to operate or provide for the operation of vending machines and to sell in such machines nonalcoholic beverages, snacks, candy, cigarettes, and other articles as determined by the Department of Economic Development to be necessary or desirable for the traveling public at reasonable prices. The prices charged for these products will approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise, such prices to be set by the department.

(d) The Department of Economic Development may also enter into contracts with other state, local, or federal agencies or with other persons to assist it in construction, operation, or maintenance of the center. The department may acquire real and personal property for such purposes. (Ga. L. 1977, p. 200, § 1; Ga. L. 1979, p. 132, § 2; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 35.)

50-7-15. Expenditures for meals and expenses of persons seeking to locate business, industry, or tourist facilities in state.

The Department of Economic Development, in order to make Georgia competitive with other states in securing new business, industry, and

tourism, is authorized to expend available funds for the business meals and incidental expenses of bona fide industrial prospects and other persons who attend any meeting at the request of the department to discuss the location or development of new business, industry, or tourism within the state. All such expenditures shall be verified by vouchers showing the date, place, purpose, and persons for whom such expenditures were made. The state auditor shall conduct an audit of such expenditures at least every six months. (Code 1981, § 50-7-15, enacted by Ga. L. 1983, p. 499, § 2; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 36.)

Cross references. — Gratuities prohibited, Ga. Const. 1983, Art. III, Sec. VI, Para. VI.

Editor's notes. — Ga. L. 1983, p. 499, § 1, not codified by the General Assembly,

provides: "It is the intent of this Act to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia."

50-7-16. Definitions; acquisition of property by Department of Economic Development.

(a) As used in this Code section, the term:

(1) "Acquire" means the obtaining of a fee simple interest in real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(2) "Lease" means a written instrument under the terms and conditions of which one party out of its own estate grants and conveys to another party or parties an estate for years retaining a reversion in itself after such grant and conveyance.

(3) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(4) "Project" means a facility to be used in conjunction with trade, commerce, industry, manufacturing, or tourism in the state.

(5) "Rental agreement" means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(b) The Department of Economic Development is authorized to acquire real property and to construct, operate, and maintain such projects as are beneficial to the development of industry, trade, and

tourism and to create economic and employment opportunities in the state. The department is authorized, with the approval of the State Properties Commission, to enter into agreements to lease, rent, or convey the real property of any such project with any person in order to accomplish such goals and upon such other terms and conditions as the department may determine to be necessary or convenient for such substantial public benefit and such consideration as may be determined by the department to be fair and equitable to the state under all the circumstances in accordance with the provisions of Article III, Section VI, Paragraph VI of the Constitution of Georgia, relating to gratuities. Subject to such principles, any such lease or rental agreement may be for and in consideration of a minimum of \$1.00 annually for each calendar year or portion thereof paid in kind to the Office of the State Treasurer and may arrange for the conveyance of such land for a fixed price, provided that such property be held, constructed, operated, maintained, expanded, or improved by the grantee and its successors and assigns consonant with the purposes of the project and other requirements of the department. (Code 1981, § 50-7-16, enacted by Ga. L. 2004, p. 684, § 2; Ga. L. 2010, p. 863, § 2/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “Department of Economic Development” was substituted for “Department of Industry, Trade, and Tourism” at the beginning of subsection (b).

50-7-17. Tourism Marketing Program and Tourism Foundation.

(a) **Statement of policy and short title.** The General Assembly finds that it is in the state’s interest to present a cohesive and vibrant message for the promotion of tourism in Georgia. This Code section, therefore, shall be known and may be cited as the “New Georgia Foundation for Tourism Act.”

(b) **Definitions.** As used in this Code section, the term:

(1) “Agency” means any officer, board, department, agency, commission, bureau, authority, public corporation, instrumentality, or other entity of state government when engaged in an activity conducive to marketing which promotes tourism.

(2) “Coordinate” and “coordination” include issuing rules, policies, standards, definitions, specifications, coordination, and other guidance and direction.

(3) “Department” means the Department of Economic Development.

(4) “Implement” and “implementation” include planning, writing, drafting, designing, study, and market analysis; solicitation and acceptance of gifts, contributions, and cooperation; contracting, pro-

curement, retention of consultants, outsourcing, similar activities, and other activities within the ordinary meaning of the term in this context.

(5) “Market” and “marketing” include promotion, advertising, signage, public relations, press relations, branding, and use of a “look”; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood.

(c) Establishment of State-wide Tourism Marketing Program.

(1) **Generally.** For promotion of tourism in Georgia, the department may establish, implement, and provide for implementing a State-wide Tourism Marketing Program, with common and consistent features for implementation by the department and agencies. Within the State-wide Tourism Marketing Program, the department may establish or authorize various themes and component programs, but such themes and component programs must have common and consistent features with the State-wide Tourism Market Program.

(2) **Emphases.** As important and substantial components of the State-wide Tourism Marketing Program, the department will place particular emphasis on branding and on the state’s great heritage and culture.

(3) **Sharing of powers.** In marketing and implementation of marketing for tourism, the department may exercise its powers under paragraphs (9) and (11) of Code Section 50-7-8 and may authorize and delegate to agencies all or parts of such powers for their own implementation.

(d) Coordination.

(1) **Generally.** The department will implement the State-wide Tourism Marketing Program and will also coordinate its implementation by individual agencies.

(2) **Delegation and agency retention.** The department may delegate marketing implementation activities to agencies in promotion of tourism and may allow agencies to retain marketing and implementation activities in the course of its coordination. The department will coordinate agencies such that they retain a measure of independence and freedom of action in marketing their own specific activities and functions, consistently with the State-wide Tourism Marketing Program.

(3) **Cooperation.** In addition to the specific administrative instructions of this Code section, the department, the Georgia Technology Authority, the Department of Administrative Services, and agen-

cies and other departments and state authorities will assist and cooperate with one another for the purposes of this Code section.

(4) **Budget.** The department may establish an annual budget covering all the costs of establishing and implementing the State-wide Tourism Marketing Program and determine an equitable basis for prorating all or part of the annual costs among the agencies, subject to approval by the Governor. Upon approval, the Governor may direct that the necessary pro rata share of the agencies assessed be made available for expenditure by the department in the same manner as appropriated funds.

(5) **Exclusion from APA.** Coordination of marketing and implementation of marketing for promotion of tourism will not be subject to the "Georgia Administrative Procedure Act," Article 1 of Chapter 13 of Title 50.

(6) **Agency publications.** Without limitation, the department may determine when the publication of official reports and similar documents, and the production of similar material in other media (such as film, video, sound, and other electronic forms) are deemed conducive to promoting tourism. Agencies will then publish or produce such material and information using themes, a "look," and other marketing elements promulgated by the department for the State-wide Tourism Marketing Program.

(e) **Georgia Tourism Foundation.**

(1) **Establishment.** There is hereby established the Georgia Tourism Foundation, existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(A) To solicit and accept contributions of money and in-kind contributions of services and property for the State-wide Tourism Marketing Program;

(B) To make and disburse contributions to the department for such purposes;

(C) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions;

(D) To formulate recommendations for the State-wide Tourism Marketing Program;

(E) Subject to approval of the Governor, to create subsidiaries with like character and powers but with limited missions keyed to particular component programs and activities of the department's State-wide Tourism Marketing Program; and

(F) To provide for additional officers and governance through bylaws which are consistent with the goals of lessening the government burden in promoting tourism, establishing and maintaining tax exempt status, and soliciting deductible contributions.

(2) **Members.** The governance of the Georgia Tourism Foundation shall be in members, consisting of not less than nine nor more than 20 members, appointed by the Governor. Members shall always include at least three members of the Board of Economic Development, together with such other members as appointed by the Governor. Service by a member of the Board of Economic Development as a member of the Georgia Tourism Foundation shall not constitute a conflict of interest. A member of the Georgia Tourism Foundation who is a member of the Board of Development shall serve as the chairperson of the Georgia Tourism Foundation and shall be elected by the members of the Georgia Tourism Foundation. In no event shall members of the Board of Economic Development comprise more than one-third of the members of the Georgia Tourism Foundation. The Georgia Tourism Foundation shall be authorized to fix the precise number of members, within the minimum and maximum numbers, by resolution adopted from time to time at a meeting of the Georgia Tourism Foundation by a majority of all the members of the Georgia Tourism Foundation. No member shall be individually liable for the acts or omissions to act by the foundation.

(3) **Administration.** The Georgia Tourism Foundation shall be attached to the department for administrative purposes. The Attorney General shall be the attorney for the foundation. The department may solicit and accept contributions from the foundation and authorize agencies to do so. The department may cooperate and contract with the foundation for their mutual benefit and authorize agencies to do so. Upon any dissolution of the foundation, its assets will devolve in trust to the department or its successor for use only for marketing to promote tourism for Georgia.

(4) **PUBLIC PURPOSE.** The creation of the Georgia Tourism Foundation and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public and charitable purpose. Further, the foundation will be performing an essential governmental function in the exercise of the powers conferred upon it by this Code section. Accordingly, the foundation shall not be subject to taxation or assessment in any manner, including without limitation taxation or assessment upon any transaction, income, money, or other property or activity. The exemptions granted in this Code section shall not be extended to any private person or entity. (Code 1981, § 50-7-17, enacted by Ga. L. 2005, p. 306, § 1/SB 125; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2013, p. 685, § 1/SB 177.)

The 2013 amendment, effective July 1, 2013, rewrote paragraph (e)(2); and substituted “shall” for “will” in the first and second sentence of paragraph (e)(3) and in the last sentence of paragraph (e)(4).

50-7-18. Disposition of assets of the Georgia Golf Hall of Fame.

The department shall receive all assets, excluding all real property and statues, of the Georgia Golf Hall of Fame Authority and the Georgia Golf Hall of Fame Board. The department shall be responsible for any contracts, leases, agreements, or other obligations of such board and authority. The department is substituted as a party to any contract, agreement, lease, or other obligation and is responsible for performance as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations. The statues owned or controlled by the Georgia Golf Hall of Fame shall be transferred by the department no later than January 1, 2011, to Augusta, Georgia, for public use by the Augusta-Richmond County Commission. (Code 1981, § 50-7-18, enacted by Ga. L. 2010, p. 753, § 2/SB 449.)

Editor’s notes. — Ga. L. 2010, p. 753, § 4/SB 449, not codified by the General Assembly, provides: “The state, acting by and through its State Properties Commission, shall be authorized to sell by competitive bid all real property owned or controlled by the Georgia Golf Hall of Fame or its authority or board for a consideration of not less than the fair market

value as determined by the State Properties Commission and not less than the amount of the outstanding bond indebtedness associated with the Georgia Golf Hall of Fame. Such sale shall be as provided in Code Section 50-16-39. Such authorization shall expire three years after the effective date of this Act.” This Act became effective June 2, 2010.

ARTICLE 2

PROMOTION OF MARINE RESEARCH AND INDUSTRIAL ACTIVITIES

50-7-30. Purpose of article; authority of department.

The principal activities of the Department of Economic Development under this article are to promote participation in and arrange for the location of marine research and industrial activities. The department may delegate to its officers, agents, and employees such duties as it may deem proper to carry out the purposes of this article. The department may contract with any department, board, or agency of the state, local, or federal government; the University System of Georgia or any of its component units; other public or private colleges and universities; nonprofit organizations; foundations; corporations; private business firms; and individuals as shall be consonant with the purposes of this article. (Ga. L. 1967, p. 12, § 1; Ga. L. 1969, p. 754, § 1; Ga. L. 1972, p. 1015, § 705; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 37.)

Cross references. — Powers and duties of Department of Natural Resources relating to development and utilization of coastal and off-shore waters, § 12-5-210

et seq. Authority of board of regents to establish and operate marine resources extension centers and an institute for oceanographic studies, T. 20, C. 12.

ARTICLE 3

GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER

50-7-40. Construction, operation, and improvement of project.

The Department of Economic Development is authorized to acquire, construct, operate, maintain, expand, and improve a project as such term is defined in paragraph (3) of Code Section 10-9-3, including each of the facilities described in such paragraph, for the purpose of promoting trade, commerce, industry, and employment opportunities within this state for the public good and general welfare and, without limitation of the foregoing, with the approval of the State Properties Commission, to acquire land for such purposes. (Code 1981, § 50-7-40, enacted by Ga. L. 1988, p. 556, § 5; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 38.)

50-7-41. Lease of property to authority.

In addition to its authority and duties provided under Code Section 10-9-5, the department shall have the authority with the approval of the State Properties Commission to lease any improved or unimproved land or other property acquired by it under Code Section 50-7-40 to the Geo. L. Smith II Georgia World Congress Center Authority for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease shall be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of the State Treasurer and in further consideration of the reasonable compliance by the authority with the requirement that such property be held, constructed, operated, maintained, expanded, or improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-41, enacted by Ga. L. 1988, p. 556, § 5; Ga. L. 1989, p. 1641, § 14; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

ARTICLE 4

GEORGIA INTERNATIONAL AND MARITIME TRADE CENTER

50-7-50. Definitions.

For purposes of this Code section, the following definitions shall apply:

(1) “Department” means the Department of Economic Development.

(2) “Local government” means, individually or in combination, the City of Savannah, Chatham County, or any development authority of either or both.

(3) “Project” means a comprehensive convention and trade center, suitable for multipurpose use for housing trade shows; conventions; cultural, political, musical, educational, entertainment, athletic, or other events; for displaying exhibits of Georgia’s counties, municipalities, industries, and attractions; and for promoting the maritime, transportation, coastal, agricultural, historical, natural, and recreational resources of the State of Georgia, including all facilities necessary or convenient to such purpose, regardless of whether such facilities are contiguous, including, by way of illustration and not limitation, the following facilities: exhibit halls; auditoriums; theaters; restaurants and other facilities for the purveying of foods, beverages, publications, souvenirs, novelties, and goods and services of all kinds, whether operated or purveyed directly or indirectly through concessionaires, licensees or lessees, or otherwise; parking facilities and parking areas in connection therewith; meeting room facilities, including meeting rooms providing for simultaneous translation capabilities for several languages; related lands, buildings, structures, fixtures, equipment, and personalty appurtenant or convenient to the foregoing; and extension, addition, and improvement of such facilities. (Code 1981, § 50-7-50, enacted by Ga. L. 1994, p. 166, § 1; Ga. L. 2004, p. 690, § 39.)

50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.

(a)(1) The department is authorized to acquire, construct, operate, maintain, expand, and improve a project for the purpose of promoting trade, commerce, industry, and employment opportunities within this state for the public good and general welfare and, without limitation of the foregoing, with the approval of the State Properties Commission, to acquire land for such purposes.

(2) The department may pay the costs of such project from any lawful fund source available for the purpose, including without limitation, where applicable, funds received by appropriation, proceeds of general obligation debt, funds of local government, grants of the United States or any agency or instrumentality thereof, gifts, and otherwise.

(3) The project shall be located in Chatham County, Georgia, and shall be known as the "Georgia International and Maritime Trade Center," except that any facility included within the project may be otherwise designated.

(b) A local government and the department are both authorized to contract with one another whereby local government may exercise on behalf of the department such future responsibility in connection with the construction, operation, management, and maintenance of the project as is now or may be vested in the department; and the department is authorized by such contract to delegate to the local government corresponding responsibilities and powers with respect to the project and to transfer to the local government any and all contracts, plans, documents, or other papers of said department relating to the project, as compensation to the local government under such contract. To the extent provided by such contract with the department, local government on behalf of the department shall acquire, plan, construct, erect, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage the project.

(c) Without limiting the generality of any provision of this article, the general purpose of the local government is declared to be that of acquiring, constructing, equipping, maintaining, and operating the project, in whole or in part, directly or under contract with the department and engaging in such other activities as it deems appropriate to promote trade shows, conventions, and political, musical, educational, entertainment, recreational, athletic, or other events and related tourism within the state so as to promote the use of the project and the use of the industrial, maritime, agricultural, educational, historical, cultural, recreational, commercial, and natural resources of the State of Georgia by those using the project or visiting the state.

(d) The department shall have the authority with the approval of the State Properties Commission to lease any improved or unimproved land or other property acquired by it under this Code section to local government for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease may be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of the State Treasurer and in further consideration that such property be held, constructed, operated, maintained, expanded, or

improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-51, enacted by Ga. L. 1994, p. 166, § 1; Ga. L. 1998, p. 128, § 50; Ga. L. 2010, p. 863, § 2/SB 296.)

ARTICLE 5

CIVIL WAR COMMISSION

Editor's notes. — By resolution (Ga. L. 1993, p. 1952), the General Assembly in 1993 created a Civil War Commission.

50-7-60. Civil War Commission created.

There is created the Civil War Commission, hereafter referred to as the commission, to coordinate planning, preservation, and promotion of the structures, buildings, sites, and battlefields associated with this significant period of our common heritage. (Code 1981, § 50-7-60, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-61. Duties and powers of Civil War Commission.

(a) The commission is directed to:

(1) Develop a State of Georgia Civil War Sites Heritage Plan. The plan will promote heritage tourism and provide incentives to local landowners and local governments to preserve Civil War battlefields and historic sites. Through cooperative agreements between local governments, landowners, and the commission, such entities will work together to preserve and restore historic sites;

(2) Preserve, conserve, and interpret the legacy of the Civil War in the State of Georgia;

(3) Recognize and interpret important events and geographic locations in the conduct of the Civil War in the State of Georgia, including battle sites associated with Adairsville, Dallas, Lovejoy Station, Marietta, New Hope Church, Resaca, Allatoona, Rocky Face Ridge, Ringgold Gap, Davis Cross Roads, Buckhead Creek, and Griswoldville, as well as other historic properties associated with the events and consequences of the Civil War;

(4) Recognize and interpret the effect of war on the state's ethnically and culturally diverse civilian population during the war and the postwar reconstruction period;

(5) Establish within the state's Historic Resource Inventory as maintained by the Department of Natural Resources a geographic data base and information system that can be used to locate, track, and cross-reference significant historical and cultural properties, structures, and markers associated with the Civil War;

(6) Acquire or provide funds for the acquisition of Civil War battlegrounds, cemeteries, and other historic properties associated with the Civil War;

(7) Expend funds received from state appropriations and other sources to make grants to municipalities, counties, and nonprofit Civil War organizations for the purposes of maintaining and restoring existing Civil War memorials and cemeteries;

(8) Participate in and encourage efforts to establish a state museum to include displays illuminating Georgia's role in the Civil War and the effects of that war on Georgia and its people; and

(9) Encourage the establishment of reference sections relating to the Civil War in high schools and encourage heritage education programs.

(b) In carrying out its purposes, the commission is authorized:

(1) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(2) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia or any agency or instrumentality thereof or from any county, municipal corporation, or local government or governing body; and

(3) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this commission. (Code 1981, § 50-7-61, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-62. Commission assigned to Department of Economic Development for administrative purposes only.

The commission is assigned to the Department of Economic Development for administrative purposes only. The commissioner of economic development shall appoint personnel within the Department of

Economic Development to facilitate the functions of the commission. (Code 1981, § 50-7-62, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-63. Acquisition of lands within boundaries of Civil War battlefields for public access; maintenance, protection, and interpretation of sites.

(a) Within the boundaries of Civil War battlefields as provided in the State of Georgia Civil War Sites Heritage Plan, the commission may, with the consent of the owner, acquire by donation, purchase, or exchange lands and interest in Civil War battlefields and memorials together with lands and interest in lands necessary to provide adequate public access to the battlefields and memorials.

(b) The commission may make funds available, subject to appropriations for such purpose, for the maintenance, protection, and interpretation of the battlefields and memorials which may be subject to agreements as provided in Code Section 50-7-61. (Code 1981, § 50-7-63, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “Code Section 50-7-61” was substituted for “Section 50-7-61” at the end of subsection (b). tion 2 of this resolution”

50-7-64. Appointment of commission.

(a)(1) The commission shall consist of 15 members to be appointed as follows:

- (A) The Governor shall appoint five members;
- (B) The President of the Senate shall appoint five members; and
- (C) The Speaker of the House of Representatives shall appoint five members.

(2) Members shall serve for four-year terms and shall be eligible for reappointment; provided, however, that with respect to the initial appointments, each appointing authority provided for in paragraph (1) of this subsection shall appoint two members for two-year terms, two members for three-year terms, and one member for a four-year term. The members shall be representative of all of the geographic areas of the state and shall be selected from the state at large with special consideration given to the appointment of persons associated with those groups or organizations with a demonstrated interest in Civil War history and the preservation of associated sites.

(b) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the

unexpired term. The commission shall elect a chairperson and such other officers as it deems necessary. No vacancy on the commission shall impair the right of the quorum to exercise all rights and perform all duties of the commission.

(c) The members of the commission shall receive a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21; and the members of the commission shall not receive any other compensation for their services as such.

(d) The commission shall file an annual report with the Governor and the General Assembly containing a summary of the accomplishments of the commission during the preceding year and the plans of the commission for the following year.

(e) No state funds shall be expended for the purposes of the commission unless specifically appropriated by the General Assembly. (Code 1981, § 50-7-64, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “of the O.C.G.A.” was deleted following “Code Section 45-7-21” in subsection (c).

ARTICLE 6

AGRICULTURAL TOURIST ATTRACTIONS

50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

(a) The General Assembly finds that:

(1) Agricultural tourist attractions provide unique opportunities for tourists to enjoy Georgia’s resources; and

(2) Agricultural tourist attractions provide an impact on Georgia’s economy and a substantial benefit to Georgia.

(b) As used in this Code section, the term:

(1) “Agricultural tourist attraction” means any agricultural based business providing onsite attractions to tourists that meet the criteria set out by the Department of Agriculture.

(2) “Department” means the Department of Agriculture.

(3) “Directional signs” shall have the meaning provided in paragraph (4) of Code Section 32-6-71.

(c) The Department of Agriculture shall:

(1) Develop criteria and an application process to determine what constitutes an agricultural tourist attraction; and

(2) Maintain a registry of approved agricultural tourist attractions.

(d) Entities wishing to be recognized by the department as an agricultural tourist attraction shall submit an application to the department with a one-time application fee of not less than \$300.00.

(e) Upon approval by the department as an agricultural tourist attraction and at the request of the applicant, the department shall, in conjunction with the Department of Transportation, take the appropriate steps to place directional signs along roads in the direct proximity of the agricultural tourist attraction to direct passing traffic to the agricultural tourist attraction.

(f) The department and the Department of Transportation shall create rules and regulations for the purpose of implementing this Code section. (Code 1981, § 50-7-70, enacted by Ga. L. 2008, p. 314, § 1/HB 1088; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2010, p. 9, § 1-92/HB 1055.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 50-7-70, as enacted by Ga. L. 2008, p. 342, § 1, was redesignated as Code Section 50-7-80.

ARTICLE 7

GOODS AND PRODUCTS MANUFACTURED IN GEORGIA

50-7-80. Legislative findings; creation of “Made in Georgia” program.

(a) The General Assembly finds that:

(1) The State of Georgia substantially benefits from the consumption of goods and products manufactured in Georgia; and

(2) The State of Georgia could further substantially benefit from creating public awareness of the importance of choosing Georgia’s goods and products whenever possible.

(b) The Department of Economic Development shall create and implement a “Made in Georgia” program promoting goods and products manufactured in Georgia. This program shall:

(1) Showcase and promote goods and products manufactured in Georgia;

(2) Inform Georgians of the diverse manufacturing sector within this state; and

(3) Provide educational outreach efforts to bring the science of manufacturing into the classroom and emphasize the significant

contributions Georgia companies make to the economy and quality of life in Georgia.

(c) The Department of Economic Development shall create and maintain a website informing the public of Georgia manufacturers and their goods and products. All state governmental entities that maintain websites shall cooperate with the Department of Economic Development to include a link to the website created pursuant to this subsection, provided that the Department of Economic Development determines that such link is appropriate and is in the best interest of the state.

(d) Companies shall be required to manufacture a minimum of 50 percent of its product or good within the boundaries of the state of Georgia to qualify for inclusion to the provisions of this Code section.

(e) The Department of Economic Development may adopt any rules and regulations that it finds necessary to properly implement this Code section. (Code 1981, § 50-7-80, enacted by Ga. L. 2008, p. 342, § 1/SB 359; Ga. L. 2009, p. 763, § 1/SB 117.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 50-7-70, as enacted by Ga. L. 2008, p. 342, § 1, was redesignated as Code Section 50-7-80.

CHAPTER 8

DEPARTMENT OF COMMUNITY AFFAIRS

Article 1

General Provisions

- Sec.
- 50-8-1. Creation and continuation of department.
- 50-8-2. Definitions.
- 50-8-3. Purpose of article; duties of department.
- 50-8-3.1. Power and duty of department.
- 50-8-4. Board of Community Affairs.
- 50-8-5. Commissioner; powers.
- 50-8-6. Divisions, sections, and offices of department.
- 50-8-7. Planning and technical assistance activities; gathering and distribution of information and studies.
- 50-8-7.1. General powers and duties.
- 50-8-7.2. Ratification of department standards and procedures by General Assembly.
- 50-8-7.3. Solid waste management education program; establishment of Georgia Clean and Beautiful Advisory Committee and Interagency Council on Solid Waste Management.
- 50-8-8. Grants, loans, and other disbursements of funds; state community development program.
- 50-8-9. Contracts with public and private entities or individuals.
- 50-8-10. Coordination of policies, programs, and actions of governments; research center on intergovernmental relations; leadership and community development programs.
- 50-8-11. Power to take action for furtherance of purposes of department; disposition of revenues.
- 50-8-12. No limitations by article on county or municipal zoning power.
- 50-8-13. Authorities and agencies assigned to department.
- 50-8-14. Exemption from "Georgia Administrative Procedure Act."

Sec.

- 50-8-15. Rights of state employees transferred from State Building Administrative Board; validity of board's legal contracts.
- 50-8-16. Rights of state employees transferred from Bureau of Community Affairs; validity of bureau's legal contracts.
- 50-8-17. Employees serve in classified and unclassified service.
- 50-8-18. Energy efficient construction of major state-funded facility projects; short title; legislative findings; "major facility project" defined.

Article 2

Regional Commissions

PART 1

LEGISLATIVE FINDINGS

- 50-8-30. Legislative findings and intent; construction of article.
- 50-8-31. Definitions.
- 50-8-32. Creation of regional commissions.
- 50-8-33. Municipal and county membership; annual dues; distribution of state funds.
- 50-8-34. Councils of regional commissions; membership; terms of membership; voting; officers; powers.
- 50-8-34.1. Executive director of commission; performance standards and annual performance review.
- 50-8-35. General powers.
- 50-8-36. Review, comment, and recommendation regarding local plans; public meetings and hearings.
- 50-8-37. Review by commission of applications submitted to United States or state or agency thereof.
- 50-8-38. Accounting of funds by commission; disclosure; access to documents.

Sec.		Sec.	
50-8-39.	Appointment of receiver of assets for protection of creditors upon center's ceasing of operations.	50-8-64.	actions by member of board or advisory committee; penalties. Competitive bidding requirement.
50-8-40.	Notice of intent to designate area-wide or multicounty agency.	50-8-65.	Annual report to Board of Community Affairs.
50-8-41.	Regional development centers succeeded by regional commissions.	50-8-66.	Civil fine for violations.
50-8-42.	Remaining powers of metropolitan area planning and development commissions.	50-8-67.	Influence of election of council members prohibited; executive directors of regional commissions prohibited from participation in partisan political activities; adoption of disciplinary measures.
50-8-43.	Appropriation or loan of funds, facilities, supplies, and equipment by local government entities.		
50-8-44.	Exemption from taxes.		
50-8-45.	Authorized purchases by Department of Administrative Services; commissioner of administrative services to prescribe regulations and standards.		
50-8-46.	No limits by article on county or municipal zoning power.		
50-8-47.	Transfer of outstanding assets, liabilities, contracts, staff, records, or debts.		

PART 2

COMMISSION ON REGIONAL PLANNING

- 50-8-50. Creation; role; application.
- 50-8-51. Establishment of board of directors; membership.
- 50-8-52. Executive directors of commissions acting as advisers.

Article 3

Conflicts of Interest in Contract Administration

- 50-8-60. Definitions.
- 50-8-61. Prohibited employment of employee of commission or non-profit corporation; penalties.
- 50-8-62. Employee's business transactions with commission or non-profit corporation prohibited; penalties.
- 50-8-63. Disclosure of employee's business transactions with local government; exempt transactions; disclosure of loan trans-

- actions by member of board or advisory committee; penalties.
- 50-8-64. Competitive bidding requirement.
- 50-8-65. Annual report to Board of Community Affairs.
- 50-8-66. Civil fine for violations.
- 50-8-67. Influence of election of council members prohibited; executive directors of regional commissions prohibited from participation in partisan political activities; adoption of disciplinary measures.

Article 4

Metropolitan Area Planning and Development Commissions

- 50-8-80. Definitions.
- 50-8-81. Legislative intent.
- 50-8-82. Creation of metropolitan area planning and development commission; first meeting.
- 50-8-83. Powers, duties, and obligations of regional commission.
- 50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.
- 50-8-85. Terms of office; removal from office; filling of vacancies.
- 50-8-86. Quorum; votes equally weighted.
- 50-8-87. Chairman; election; powers and duties; salary and expense allowances; removal.
- 50-8-88. Election of officers; compensation of officers and members.
- 50-8-89. Executive director; selection and appointment.
- 50-8-90. Terms of employment of officers, employees, and agents; power to contract with private individuals; officers and employees to be public employees.
- 50-8-91. Establishment of advisory committees; appointment of members; compensation.
- 50-8-92. Development guides; contents.
- 50-8-93. Review of area plans; designation as official planning agency; responsibility to carry out assigned or delegated planning functions for an area.

Sec.

- 50-8-94. Submission by municipality and county of area plan; comment and recommendation; public hearing upon request for reconsideration of recommendation.
- 50-8-95. Submission by public entity of area plan; review; public hearing upon request for reconsideration of recommendation.
- 50-8-96. Commission to review all applications of governmental entities for state or federal loan or grant; procedure.
- 50-8-97. Commission to engage in continuous program of research, study, and planning of matters affecting its area.
- 50-8-98. Determination of whether plan is area plan under Code Section 50-8-80; procedure; authorization to adopt bylaws, rules, and regulations.
- 50-8-99. Authorization to accept gifts, loans, and grants from governments and agencies.
- 50-8-99.1. Commission authorized to be contracting agent for certain local governments.
- 50-8-100. Annual report to General Assembly and to each political subdivision and supporting agency; contents.
- 50-8-101. Books of account; annual population estimates; operating funds; annual program and budget.
- 50-8-102. Submission of negative or unfavorable recommendation based upon stale data.
- 50-8-103. Determination of effective dates of certain Code sections by resolution of commission or by operation of law.

Article 5**Rural Economic Development**

- 50-8-120. Short title.
- 50-8-121. Rural economic development areas.
- 50-8-122. Studies for proposed projects.
- 50-8-123. Recommendation, approval, funding, and implementation of projects.

Article 6**Office of Rural Development; State Advisory Committee on Rural Development****PART 1****OFFICE OF RURAL DEVELOPMENT**

Sec.

- 50-8-140. Legislative intent; creation of office.
- 50-8-141. Duties and responsibilities.
- 50-8-142. Employees.

PART 2**RURAL DEVELOPMENT COUNCIL**

- 50-8-150. Creation of council; members; terms; officers; regular meetings; expenses; bylaws.

Article 7**Grants Promoting E-85 Gasoline**

- 50-8-170. Definitions; facilitating E-85 projects; implementation of grant program.

Article 8**Regional Economic Assistance Projects**

- 50-8-190. Definitions.
- 50-8-191. Application for REAP designation; minimum criteria; reciprocal use agreements with adjacent facilities.
- 50-8-192. Certification of compliance; notices of noncompliance.
- 50-8-193. State agencies encouraged to give certified projects priority in licensing and processing grants and loans.
- 50-8-194. Annual report by project developer.
- 50-8-195. Promulgation of rules and regulations.

Article 9**Rural Facilities Economic Development**

- 50-8-210. Short title.
- 50-8-211. Legislative findings.
- 50-8-212. Definitions.

- Sec.
50-8-213. Designation and ranking of less developed counties.
50-8-214. Membership of facilities development committee.
50-8-215. Policies and procedures for facilities development committee.
50-8-216. Preparation of comprehensive local plan for less developed county.
50-8-217. Conflicts arising in preparation and submission of local plan.
50-8-218. Submission of local plan required; applications for grants.
50-8-219. Review of local plan by commissioner.
50-8-220. Matching grants for implementation of local plan.

- Sec.
50-8-221. Oversight of local plan by facilities development committee.
50-8-222. Distribution of appropriated funds; ratio of matching funds; submission of consolidated report and accounting.

Article 10

Martin Luther King, Jr., Advisory Council

- 50-8-240. Creation; members; vacancies; quorum.
50-8-241. Duties.
50-8-242. Authority to establish not for profit corporation and appoint members.

Cross references. — Community planning and development functions of Office of Planning and Budget, § 45-12-170 et seq.

Administrative rules and regulations. — Georgia Department of Community Affairs, Official Compilation of the

Rules and Regulations of the State of Georgia, T. 110.

Law reviews. — For article, “State Government: Department of Community Affairs,” see 28 Ga. St. U.L. Rev. 305 (2011).

ARTICLE 1

GENERAL PROVISIONS

Editor’s notes. — Ga. L. 1988, p. 38, § 1, effective February 24, 1988, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 50-8-1 through 50-8-12 and was based on Ga. L. 1957, p. 446; Ga. L. 1967, p. 252; Ga. L. 1970, p. 321; Ga. L. 1976, p. 648; Ga. L. 1976, p. 658; Ga. L. 1977, p. 381; Ga. L. 1978, p. 1542; Ga. L. 1978,

1592; Ga. L. 1979, p. 1063; Ga. L. 1980, p. 1316; Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act) and Ga. L. 1982, p. 3; Ga. L. 1982, p. 2310; Ga. L. 1983, p. 3; Ga. L. 1984, p. 378; Ga. L. 1984, p. 1177; Ga. L. 1985, p. 149; and Ga. L. 1987, p. 345.

Law reviews. — For article, “Georgia Wetlands: Values, Trends, and Legal Status,” see 41 Mercer L. Rev. 791 (1990).

50-8-1. Creation and continuation of department.

The Department of Community Affairs is created as a department of the executive branch of state government. The Department of Community Affairs, as it existed immediately prior to July 1, 1989, shall continue to exist as a department of the executive branch of state government in accordance with this article. From and after July 1,

1989, the Department of Community Affairs shall have the duties, responsibilities, functions, power, and authority set forth in this article and otherwise provided by law. (Code 1981, § 50-8-1, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Administration, Chapter 110-1-1.

Minimum planning standards and pro-

cedures for local comprehensive planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planning, Chapter 110-3-2.

50-8-2. Definitions.

(a) As used in this article, the term:

(1) “Board” means the Board of Community Affairs.

(2) “Commissioner” means the commissioner of community affairs.

(3) “Comprehensive plan” means any plan by a county or municipality covering such county or municipality or any plan by a regional commission covering the center’s region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with this article.

(4) “Conflict” means any conflict, dispute, or inconsistency arising:

(A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;

(B) Between or among comprehensive plans for any regions, as proposed, prepared, proposed to be implemented, or implemented;

(C) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;

(D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department pursuant to this article; or

(E) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department pursuant to this article.

(5) “Constitution” means the Constitution of the State of Georgia.

(6) “Contract” means any contract, agreement, or other legally binding arrangement.

(7) “Coordinated and comprehensive planning” means planning by counties and municipalities and by regional commissions in accordance with the minimum standards and procedures. Coordinated and comprehensive planning is one of the local government affairs for which the department is authorized to assist in the performance of local government services.

(8) “County” means any county of this state.

(9) “Department” means the Department of Community Affairs.

(10) “Eligible recipient” means any local government, school district, or other government entity which may be eligible to receive funds from the department pursuant to terms for eligibility established by the department or those established by the government or other source which makes the funds available to the department.

(11) “Government” means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.

(12) “Local government” means any county, municipality, or other political subdivision of the state; any regional commission; any public agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any of their lawful purposes but shall not include school districts.

(13) “Local government affairs” means all matters involving or affecting local governments including, but not limited to, coordinated and comprehensive planning in which the state is or may become empowered or authorized to perform any duties, responsibilities, or functions or to exercise any power or authority.

(14) “Local government services” means the activities performed or authorized to be performed by the department including, but not limited to, its performance of duties, responsibilities, and functions in local government affairs and its exercise of power and authority in local government affairs.

(15) "Minimum standards and procedures" means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department in accordance with this article. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department, in accordance with this article.

(16) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(17) "Necessary" means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(18) "Qualified local government" means a county or municipality which:

(A) Has a comprehensive plan in conformity with the minimum standards and procedures;

(B) Has made its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures; and

(C) Has not failed to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department, reflects a good faith effort to resolve any conflict.

(19) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board in accordance with the provisions of subsection (f) of Code Section 50-8-4.

(20) "Regional commission" means a regional commission established under Article 2 of this chapter.

(21) "Rural area" means any nonurban area in the state as defined in rules and regulations of the department.

(22) "School district" means any school district, independent school system, or other local school system in the state.

(23) "State" means the State of Georgia.

(24) "State agency" means any department, agency, commission, or other institution of the executive branch of the government of the State of Georgia.

(b) A reference to the terms of any contract or writing or to the terms under which any funds are made available shall be construed as a reference to all terms, conditions, covenants, representations, warranties, and other provisions. (Code 1981, § 50-8-2, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, §§ 1, 18, 24/HB 1216.)

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*,
259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-3. Purpose of article; duties of department.

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this article is to provide for the department to serve these essential public interests of the state by developing, promoting, sustaining, and assisting local governments, by developing, promoting, and establishing standards and procedures for coordinated and comprehensive planning, by assisting local governments to participate in an orderly process for coordinated and comprehensive planning, and by assisting local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens. This article shall be liberally construed to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department shall serve as the principal department in the executive branch of state government for local government affairs. The department shall perform the state's role in local government affairs by carrying out the state's duties, responsibilities, and functions in local government affairs and by exercising its power and authority in local government affairs. Without limiting the generality of the purposes served by the department, the department shall:

- (1) Develop, promote, sustain, and assist local governments;
- (2) Provide a liaison between local governments and other governments, including the state government and the federal government;

(3) Act as the state's principal department for local government affairs and local government services generally and for programs, functions, and studies in local government affairs and local government services and act as the coordinator on the state government level for such programs, studies, and functions provided by the department and for those provided by others;

(4) Act as the state's principal department for developing, promoting, maintaining, and encouraging coordinated and comprehensive planning;

(5) Develop, promote, sustain, and assist local governments in the performance of their duties and responsibilities under law to their citizens, including among such duties and responsibilities of local governments coordinated and comprehensive planning; the provision of infrastructure and other public works and improvements; the development, promotion, and retention of trade, commerce, industry, and employment opportunities; the provision of transportation systems; and the promotion of housing supply;

(6) Serve as the representative of the Governor to local governments and in local government affairs on a regular basis and on special assignments as authorized by the Governor;

(7) Assist the Georgia Housing and Finance Authority for any purpose necessary or incidental in the administration and performance of the Georgia Housing and Finance Authority's duties, powers, responsibilities, and functions as provided in Chapter 26 of this title;

(8) Reserved; and

(9) Assist the OneGeorgia Authority for any purpose necessary or incidental in the administration and performance of the OneGeorgia Authority's duties, powers, responsibilities, and functions as provided in Chapter 34 of this title. (Code 1981, § 50-8-3, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 5; Ga. L. 1998, p. 1386, § 4; Ga. L. 2002, p. 1059, § 1; Ga. L. 2005, p. 306, § 4/SB 125.)

Cross references. — Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "this title"

was substituted for "Title 50" in paragraph (b)(7).

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*, 259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-3.1. Power and duty of department.

(a) The department shall have the power and duty to investigate fraud and abuse in the federal Section 8 Housing Choice Voucher Program administered by the department pursuant to 42 U.S.C. Section 1437, et seq.

(b) When cases of criminal fraud or abuse are discovered or detected, the department shall refer such cases where warranted to the district attorney of the county in which the fraud or abuse occurred for prosecution. Such cases shall be prosecuted as violations of Code Section 16-8-3, relating to theft by deception; Code Section 16-10-20, relating to making false statements or writings; Code Section 16-10-71, relating to false swearing; or any other such criminal provision as the district attorney may deem appropriate under the facts and circumstances of the case.

(c) When a case of fraud or abuse is discovered or detected that is not criminal in nature or when a prosecutor declines to prosecute a case referred by the department under this Code section, the department shall have the authority to settle such case on such terms and conditions as the department finds suitable under the facts and circumstances of the case. In addition, the department shall be authorized to initiate and prosecute civil actions to recoup overpayments or improper payments. The department shall also have the authority to settle such civil cases on such terms and conditions as the department finds suitable under the facts and circumstances of the cases.

(d)(1) Prior to the filing of an accusation or the return of an indictment alleging fraud or abuse in the federal Section 8 Housing Choice Voucher Program administered by the department, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law or by the rules and regulations of the department, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. Prior to entering into such consent agreement with an individual, the prosecuting attorney or his or her designee shall advise such person that he or she may consult with an attorney prior to signing such consent agreement. If the individual so requests, he or she shall be afforded a reasonable amount of time, not to exceed 15 days, to engage or consult an attorney. A consent agreement entered into in

accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Code 1981, § 50-8-3.1, enacted by Ga. L. 2006, p. 694, § 1/HB 1162.)

50-8-4. Board of Community Affairs.

(a) The Board of Community Affairs, as it existed immediately prior to July 1, 1996, shall be abolished effective July 1, 1996, and the Board of Community Affairs, from and after July 1, 1996, is established in accordance with this Code section. The board shall establish policy and direction for the department and shall perform such other functions as may be provided or authorized by law.

(b) Membership on the board shall be determined as follows:

(1) The terms of all members of the Board of Community Affairs serving immediately prior to July 1, 1996, shall expire effective July 1, 1996. The Governor shall appoint the initial members of the board for terms beginning on July 1, 1996, or the date on which the Governor makes the appointment, whichever is later. The terms of initial members of the board shall expire on a staggered basis, as follows: the terms of four of the members shall expire on July 1, 1997, and the terms of three other members shall expire on each July 1 thereafter through July 1, 2001, when the terms of all initial members of the board shall have expired. The Governor shall specify, when he appoints each initial member of the board, the expiration date of that member's term. Upon expiration of the term of each initial member of the board, the Governor shall appoint all successor members of the board for terms of five years. The terms of initial members and subsequent members of the board shall extend beyond

the date of expiration and until their successors are appointed and qualified;

(2) The board shall be composed of one member from each United States congressional district in the state and five additional members from the state at large. Members of the board shall include elected officials of either counties or municipalities, individuals who have an interest or expertise in community or economic development, environmental issues, housing development, or finance, or other citizens who in the judgment and discretion of the Governor would enhance the board by their membership;

(3) The term of a member shall expire when it ends or shall terminate earlier immediately upon:

(A) Resignation by a member;

(B) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(C) Any change in local elective office or residence of a member which would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection;

(4) The Governor shall appoint a new member within 60 days after the expiration or termination of a member's term. The Governor may reappoint members of the board to consecutive terms unless such reappointment would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection; and

(5) Membership on the board does not constitute public office to the extent that a member of the board is precluded from holding other public office.

(c) Officers of the board shall be elected and shall serve as follows:

(1) The officers of the board serving immediately prior to July 1, 1996, shall cease to serve the respective terms for which they were elected, effective July 1, 1996;

(2) Thereafter the members of the board shall elect a chairman, a vice chairman, and a secretary from among the members of the board;

(3) The board shall elect officers at each July meeting or, if there is no July meeting, at the next monthly meeting;

(4) Officers shall serve for a term of one year, beginning with their election and qualification and ending with the election and qualification of their respective successors; and

(5) No person shall hold the same office on the board for more than one term consecutively.

(d) The board shall hold meetings as often as it determines to do so. The board may establish a regular meeting schedule and a procedure for calling special meetings. Unless the board establishes another procedure, the chairman or any five members of the board may call special meetings upon adequate written, personal, telephone, or facsimile notice to members of the board. A majority of the members in office shall constitute a quorum for conducting business, and a majority of those present at any meeting shall be required to approve any action taken by the board. A member must be present at a meeting to count for purposes of determining whether a quorum exists and to vote or otherwise act on matters which come before that meeting. No member may vote or otherwise act through a proxy, designee, or delegate. The board may establish such additional rules and procedures as it deems appropriate for conducting its business from time to time. These rules and procedures may be established in bylaws or in such other form as the board deems appropriate.

(e) Each member of the board shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a board member is in attendance at a meeting of the board or a committee meeting of the board, plus reimbursement for actual transportation expenses incurred while traveling by public carrier or the mileage allowance authorized for state officials and employees for the use of a personal automobile in connection with such attendance. This per diem and reimbursement for transportation expenses shall be paid in lieu of any other per diem, allowance, remuneration, or compensation.

(f)(1) The initial territorial boundaries for the operation of the regional commissions shall be as follows: Region 1 shall be made up of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield; Region 2 shall be made up of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White; Region 3 shall be made up of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale; Region 4 shall be made up of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson; Region 5 shall be made up of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton; Region 6 shall be made up of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson; Region 7 shall be made up of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes; Region 8 shall be made up of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster; Region 9 shall

be made up of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox; Region 10 shall be made up of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth; Region 11 shall be made up of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton, Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware; and Region 12 shall be made up of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven. The board for each regional commission shall ratify the boundaries provided for in this paragraph. If a regional commission fails to ratify such boundaries, such commission shall continue to operate under the existing boundaries for such commission prior to June 30, 2009. The provisions of Article 2 of this chapter shall apply to a regional commission failing to ratify the boundaries provided for in this Code section; provided, however, that such commission shall not be eligible to receive funding pursuant to Code Section 50-8-33.

(2) Notwithstanding the territorial boundaries established pursuant to paragraph (1) of this subsection, the board shall determine and establish, from time to time, the territorial boundaries for the region of operation by each regional commission as well as the total number of the regions; provided, however, that any action of the board altering the boundaries of a regional commission or changing the total number of the regions shall not be effective until approved by the General Assembly at the next regular session following such action by the board by means of the adoption of a joint resolution ratifying such action. Each county shall be wholly within the region of one regional commission, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the board shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional commission.

(g) In addition to ratification by resolution, the General Assembly may ratify regional commission boundary changes by Act. (Code 1981, § 50-8-4, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 6; Ga. L. 1999, p. 789, § 4; Ga. L. 2008, p. 181, § 2/HB 1216.)

Cross references. — Per diem expense allowance allowed to members of General Assembly, § 45-7-4(a)(22). Legal mileage allowance, § 50-19-7.

Editor's notes. — Ga. L. 2008, p. 181,

§ 26/HB 1216, provided that the 2008 amendment of this Code section became effective only upon appropriation of funds. Funds were appropriated at the 2009 session of the General Assembly.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations

governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 63, 65, 88, 105, 108 et seq.

C.J.S. — 81A C.J.S., States, §§ 169, 170.

50-8-5. Commissioner; powers.

(a) The office of the commissioner of community affairs, as it existed immediately prior to July 1, 1989, shall continue to exist in accordance with this article. The commissioner shall be the department head, whose duties shall include serving as the department’s chief executive officer and administrative head. The commissioner serving immediately prior to July 1, 1989, shall continue to serve as commissioner at the pleasure of the board. Thereafter the commissioner shall be appointed by the board and shall serve at the pleasure of the board. The board shall establish the compensation for the commissioner limited by any amount that may be specified in the appropriations Act.

(b) The commissioner shall have and may exercise the following power and authority:

(1) The power and authority to take or cause to be taken any or all action necessary to perform any local government services or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(2) The power and authority to make, promulgate, enforce, or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any local government services, to carry into effect the minimum standards and procedures for coordinated and comprehensive planning, or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(3) The power and authority to certify, from time to time, municipalities and counties as qualified local governments, which certification shall not be unreasonably withheld; and

(4) The power and authority to assist the board in the performance of its duties, responsibilities, and functions and the exercise of its power and authority. (Code 1981, § 50-8-5, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Cross references. — Duties of commissioner with regard to factory-built housing, § 8-2-110 et seq.

50-8-6. Divisions, sections, and offices of department.

The department shall be divided into such divisions, sections, or offices as may be necessary from time to time. All divisions, sections, or offices in existence immediately prior to July 1, 1989, shall continue to exist in accordance with this article. Thereafter, divisions, sections, and offices shall be abolished, reorganized, or established from time to time by the commissioner and as otherwise specified by law. The commissioner shall appoint such directors, deputies, and assistants as may be necessary to manage such divisions, sections, and offices. Such positions shall be in the unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-8-6, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-101/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the last sentence of this Code section.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

50-8-7. Planning and technical assistance activities; gathering and distribution of information and studies.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such planning and technical assistance activities as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) The department may provide technical assistance to local governments. This assistance may be directed to any and all activi-

ties of local government including, but not limited to, preparation and implementation of a comprehensive plan, community and economic development, and governmental administration, finance, management, and operations;

(2) The department may provide planning assistance to local governments. This assistance may include assistance with respect to preparation or implementation of a local government's comprehensive plan and participation in the process for coordinated and comprehensive planning. This assistance may also include long-range planning relevant to one or more local governments to identify the needs of such local governments or planning with respect to downtown development and the redevelopment and revitalization of downtown areas and central business districts;

(3) The department may assist local governments in planning for the consequences or other results of decisions or actions by any government which have an impact on local governments or on any of their citizens;

(4) The department may provide planning assistance to any local government or any state agency or state authority in connection with housing and dwelling places for citizens of the state. This assistance may include planning with respect to the availability of single-family, multifamily, and other types of housing units, the anticipated changes in such availability, the potential occupants for such housing, and the anticipated changes in such potential occupants. This assistance may also include planning with respect to homeless persons and the shelter needs of homeless persons; and

(5) The department's planning and technical assistance activities may include planning, technical assistance, analysis, recommendations for policies or action, and related activities and services with respect to any lawful purpose or activity of a local government.

(b) The department shall undertake and carry out, and shall coordinate with other state agencies and local governments in undertaking and carrying out, such gathering of information, such distribution of information, and such studies and recommendations as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such coordinating, gathering, and distribution of information and studies may include, but shall not be limited to, the following:

(1) The department shall coordinate and participate in compiling, and other state agencies and local governments shall participate in compiling, a Georgia data base and network to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies. The Georgia data base and network

shall collect, analyze, and disseminate information with respect to local governments, regional commissions, and state agencies. The Georgia data base and network shall include information obtained or available from other governments and information developed by the department. To maintain the Georgia data base and network, the department shall make, and shall coordinate with other state agencies and local governments in making, comprehensive studies, investigations, and surveys of the physical, social, economic, governmental, demographic, and other conditions of the state and of local governments and of such other aspects of the state as may be necessary to serve the purposes of the department. The department shall make available the Georgia data base and network, or provide access to the Georgia data base and network, to other state agencies, local governments, members of the General Assembly, and residents of the state;

(2) The department may assist the Governor, the General Assembly, any committees of the General Assembly, any state department, any state agency, any state authority, or any local government with studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information prepared, developed, or obtained by the department;

(2.1) The department may assist any local government or local authority owning or operating a facility for convention and trade show purposes or any other similar or related purposes in identifying and promoting regional economic assistance projects within their respective jurisdictions, and such facility, if the subject of a reciprocal use agreement, shall be an adjacent facility satisfying the criteria of paragraph (1) of subsection (c) of Code Section 50-8-191;

(3) The department may undertake studies, investigations, and surveys to identify potential physical, social, economic, governmental, demographic, or other problems and opportunities in the urban, suburban, and rural areas of the state and to assist local governments in preparing to avoid the consequences of such problems or to take advantage of such opportunities; and

(4) The department may write, draft, prepare, or publish in print or electronically any studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information with respect to local or regional government affairs. The department may distribute or otherwise disseminate any such studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information to any government, any state authority or state agency, or any private entity.

(c) The duties, responsibilities, and functions of the department and the power and authority of the department described in this Code

section are cumulative with, and in addition to, all other duties, responsibilities, and functions and power and authority of the department and are not intended to, and shall not be construed to, conflict with any other duties, responsibilities, or functions or any other power or authority of the department, including, but not limited to, the duties, responsibilities, and functions and the power and authority described in Code Section 50-8-7.1. (Code 1981, § 50-8-7, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 3/HB 1216; Ga. L. 2008, p. 363, § 2/HB 1280; Ga. L. 2010, p. 838, § 10/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a semicolon was substituted for a period at the end of paragraph (b)(2.1).

Administrative rules and regulations. — Developments of regional impact, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-3.

Mediation of interjurisdictional conflicts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-5.

OPINIONS OF THE ATTORNEY GENERAL

Use of money from emergency fund to prepare planning study. — Planning and Programming Bureau (now Department of Community Affairs) can use money from the Governor's emergency fund to prepare a municipal planning study itself or, in the alternative, contract with a third party, such as a planning consultant for preparation of the study by the latter. 1969 Op. Att'y Gen. No. 69-312.

Grant for construction of local government facilities. — Department of Community Affairs is without legal authority to make a grant of state funds to a city or county for the construction of a civic center or carpet exposition facility. 1987 Op. Att'y Gen. No. 87-15.

RESEARCH REFERENCES

ALR. — Constitutionality of levee and flood control acts, 70 ALR 1274.

Liability of municipality or other gov-

ernmental subdivision in connection with flood-protection measures, 5 ALR2d 57.

50-8-7.1. General powers and duties.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department, utilizing the comprehensive plans of qualified local governments, shall undertake and carry out such activities as may be necessary to assist the Governor in encouraging, coordinating, developing, and implementing coordinated and comprehensive planning. Such activities may include, but shall not be limited to, the following:

(1) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Gover-

nor in coordinated and comprehensive planning on the state level and throughout the state, including, but not limited to, assistance in the development of a comprehensive plan for the state;

(2) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Governor in defining the state's long-term goals, objectives, and priorities and implementing those goals, objectives, and priorities through coordinated and comprehensive planning;

(3) The department shall examine and analyze plans of state agencies, comprehensive plans of regional commissions, and comprehensive plans of municipalities and counties, undertaken as part of the coordinated and comprehensive planning process, and advise the Governor with respect to those plans; and

(4) The department shall serve as policy liaison for the Governor, with respect to coordinated and comprehensive planning, with and among state agencies and local governments.

(b) The department shall establish in accordance with the provisions of Code Section 50-8-7.2 minimum standards and procedures for coordinated and comprehensive planning, including standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process. The department shall undertake and carry out such activities as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) As part of such minimum standards and procedures, the department shall establish minimum elements which shall be addressed and included in comprehensive plans of local governments which are prepared as part of the coordinated and comprehensive planning process;

(2) The department shall establish minimum standards and procedures which shall be used by local governments in developing, preparing, and implementing their comprehensive plans. The department shall incorporate the minimum standards and procedures with respect to natural resources, the environment, and vital areas of the state established and administered by the Department of Natural Resources pursuant to Code Section 12-2-8. In establishing such minimum standards and procedures, the department shall be authorized to differentiate among local governments and among regions based upon factors which the department determines merit differentiation, such as total population, density of population, geographic features, the size of tax base, the type and character of services furnished by local governments, the size of budget, and other factors;

(3) The department shall develop planning procedures with respect to regionally important resources, for planning with respect to

developments of regional impact, and for encouraging interjurisdictional cooperation among local governments. The department shall determine, in its judgment and for each region, what shall constitute developments of regional impact. Such determinations by the department shall be made for each region after receiving any necessary information from the regional commission for the region, from local governments within the region, and from others within the region. The department's determinations shall be publicly promulgated, using such means as the commissioner may determine, so that all local governments within a region will receive notice of the department's determinations affecting that region; and

(4) The department shall establish and shall promulgate procedures for obtaining input from, and participation by, local governments and the public in establishing, amending, and updating from time to time the minimum standards and procedures.

(c) The department shall undertake and carry out such activities as the board or the commissioner may deem necessary for supervising regional commissions and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department shall recommend to the board from time to time the boundaries for the regions for each of the regional commissions; and

(2) The department shall review and comment on comprehensive plans prepared by, and coordinated and comprehensive planning activities undertaken by or under the direction of, regional commissions.

(d) The department shall undertake and carry out such activities as may be necessary to mediate, or otherwise assist in resolving, conflicts. Such activities may include, but shall not be limited to, the following:

(1) The department may establish such procedures and guidelines for mediation or other forms of resolving conflicts as the commissioner may deem necessary. The procedures and guidelines shall specify the times within which steps in the mediation or other form of conflict resolution shall take place and shall provide that such times shall not exceed, in the aggregate, 90 days from the date on which mediation or other conflict resolution begins. The department shall promulgate and make public all such procedures and guidelines;

(2) The department may act to mediate or otherwise assist in resolving conflicts upon written request from any regional commission or local government or may act, without any such request, on its own initiative;

(3) The department may establish rules and procedures which require that local governments submit for review any proposed action

which would, based upon guidelines which the department may establish, affect regionally important resources or further any development of regional impact. Any such proposed action by a local government (other than a regional commission) shall be submitted for review to the local government's regional commission. A report shall be prepared and submitted to the regional commission council, including potential impacts of the proposed development of regional impact. The report shall be made available to the local governments in the region and on the website of the regional commission. Any such proposed action by a regional commission shall be submitted for review to the department. Review shall be in accordance with rules and procedures established by the department;

(4) Any conflict which remains after review pursuant to the procedures established under paragraph (3) of this subsection shall be submitted to mediation or such other form of resolving conflicts as the commissioner may deem necessary; and

(5) The department may decline to certify a local government as a qualified local government or may take or recommend action which would reduce state or other funding for a regional commission if such local government or regional commission, as the case may be, is a party to a conflict but fails to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department and a majority of the Board of Community Affairs, reflects a good faith effort to resolve the conflict. (Code 1981, § 50-8-7.1, enacted by Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 4/HB 1216; Ga. L. 2013, p. 1104, § 1/SB 104.)

The 2013 amendment, effective July 1, 2013, in paragraph (b)(1), substituted a semicolon for a period at the end, and deleted the former second sentence, which read: "These elements shall include, but shall not be limited to, housing, human services, natural resources, the environment, vital areas, historic and cultural resources, infrastructure, land use other than zoning, recreation, transportation, and economic development;"; and, in paragraph (d)(3), added the third and fourth sentences, substituted a semicolon for a period at the end, and deleted the former last sentence, which read: "The review shall result in a public finding by the regional commission or the department, as the case may be, that the action will be in the best interest of the region and state or that it will not be in the best interest of the region and state;".

Cross references. — Amendment and revision of code provisions, § 8-2-23. Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

Editor's notes. — By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1989.

By resolution (Ga. L. 1990, p. 945), the General Assembly ratified the initial minimum standards and procedures for coordinated and comprehensive planning adopted by the Department and Board of Community Affairs on January 10, 1990.

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*, 259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-7.2. Ratification of department standards and procedures by General Assembly.

The initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be submitted by the department to the General Assembly at the next regular session following July 1, 1989, and shall become effective only when ratified by joint resolution of the General Assembly. The power of the department to promulgate such initial minimum standards and procedures shall be deemed to be dependent upon such ratification. Any subsequent amendments or additions to the initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be promulgated in accordance with and subject to the provisions of Chapter 13 of this title, the "Georgia Administrative Procedure Act." (Code 1981, § 50-8-7.2, enacted by Ga. L. 1989, p. 1317, § 2.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "July 1, 1989," was substituted for "the effective date of this Act" in the middle of the first sentence.

Editor's notes. — By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital ar-

eas of the state adopted by the Department and Board of Natural Resources on December 6, 1990.

By resolution (Ga. L. 1990, p. 206), the General Assembly ratified the supplemental funding formula for regional development centers adopted by the Department and Board of Community Affairs on February 14, 1990.

50-8-7.3. Solid waste management education program; establishment of Georgia Clean and Beautiful Advisory Committee and Interagency Council on Solid Waste Management.

The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall establish a solid waste management education program in the state. Such program shall include, but not be limited to, the following:

(1)(A) The establishment of a Georgia Clean and Beautiful Advisory Committee that shall assist the department in developing, coordinating, and implementing efforts to educate the citizens of the state on methods of solid waste management.

(B) The advisory committee shall consist of no more than 30 members, who shall be appointed by the Governor and be repre-

sentative of state and local government; business and industry; community, environmental, and civic organizations; the news media; educators; and other areas as the Governor may deem appropriate.

(C) Members of the advisory committee are authorized to receive reimbursement for actual expenses incurred in the performance of their duties from such funds as may be appropriated for such purposes and within such limits as may be established by the department; and

(2)(A) The establishment of an Interagency Council on Solid Waste Management that shall be chaired by the commissioner and shall consist of representatives from departments and agencies within state government that have responsibilities or activities relating to solid waste.

(B) The council shall serve as a forum for gathering and sharing information on solid waste management as well as for developing and initiating activities within state government relating to solid waste management and shall provide advice and assistance to the Georgia Clean and Beautiful Advisory Committee and its educational programs. (Code 1981, § 50-8-7.3, enacted by Ga. L. 1990, p. 412, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted from the beginning of the section since there is no subsection (b).

50-8-8. Grants, loans, and other disbursements of funds; state community development program.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall make grants or loans to eligible recipients or qualified local governments, which grants or loans are specified by amount, recipient, and purpose in an appropriation to the department; provided, however, that the department shall not make such a grant to any county or independent board of education for the construction or operation of athletic facilities during the fiscal year following the receipt by the department of certification by the State Board of Education that the county or independent board of education is not in compliance with the requirements of Code Section 20-2-315. The department shall also grant to any school district the proceeds of any general obligation debt for educational facilities for which the department is named user agency and the school district is named recipient in an appropriation authorizing the debt. The department may make grants or loans to eligible recipients or qualified local governments from appropriations made to the department generally for

grant or loan purposes, without appropriations language specifying amounts, recipients, and purposes. The department:

(1) Shall disburse such grants or loans on the basis of criteria which include consideration of matters such as legislative intent; local, regional, or state-wide impact or benefit; public exigencies or emergencies; enhancement of community and economic development opportunities; improvement or expansion of government operations or services; community health, safety, and economic well-being; coordinated and comprehensive planning in accordance with minimum standards and procedures; and any other similar criteria that may from time to time be established by the department; and

(2) May condition the award of any such grants or loans to a county or municipality upon the county or municipality, as the case may be, being a qualified local government.

(b) The department shall direct the distribution of any appropriations or other funds available for coordinated and comprehensive planning in accordance with the Act of the General Assembly providing for such appropriations. No grant or loan by the department to any eligible recipient or qualified local government shall adversely affect any grant, loan, or service to the eligible recipient or qualified local government by any other unit or instrumentality of state government. Without limiting the foregoing, the Department of Education, the Department of Transportation, the Georgia Environmental Finance Authority, and the state treasurer shall not diminish or fail to award any funds, loans, or service to any recipient under any state or federal program in whole or in part on account of a grant or loan by the department. Grants or loans by the department are and shall be deemed to be of a special nature and in addition to all such other grants, loans, or awards. The following provisions shall apply to making such funds available to eligible recipients or qualified local governments:

(1) The department may make available funds by grant or loan to an eligible recipient or qualified local government, by direct payments on behalf of an eligible recipient or qualified local government, or by any other lawful means. In the event the department determines that, in its judgment, a regional commission has failed to comply with its duties as provided by law or with the terms of a contract between such regional commission and a local government, the department shall be authorized to make payments, which it otherwise would have made to the regional commission, directly to the local government or as the department otherwise determines in order to carry out the duties of the regional commission under the law or such contract;

(2) The department may accept, use, and disburse gifts and grants made to it on terms consistent with its legal powers, from any public or private source;

(3) The department shall specify the terms under which it makes any funds available to an eligible recipient or qualified local government. The terms shall be those established or otherwise required by the government or other source which makes the funds available to the department. If such government or other source does not establish or otherwise require any such terms, the department may establish the terms;

(4) The department shall set forth in writing the terms under which the department makes funds available to a qualified local government or eligible recipient. The terms may be set forth in a contract. The department may execute any such contract on behalf of the state, and any eligible recipient which is a qualified local government, school district, state agency, or state authority is authorized to execute any such contract. Any such writing or contract may incorporate other terms or laws by reference to such terms or laws;

(5) The department shall manage and administer all funds made available pursuant to this Code section; and

(6) The department may make funds available for any purpose for which the eligible recipient or qualified local government may lawfully use such funds. Unless precluded by general law, these purposes may include, but shall not be limited to, assisting in or furthering any of the purposes, duties, responsibilities, functions, power, or authority of local governments or the department. These purposes may also include, but shall not be limited to, establishing, developing, constructing, improving, maintaining, restoring, or protecting local government projects or purposes of any nature, such as:

- (A) Construction projects;
- (B) Capital outlay projects;
- (C) Infrastructure projects;
- (D) Planning services;
- (E) Technical assistance;
- (F) Coordinated and comprehensive planning;

(G) Marketing and promotional projects to encourage tourism and to develop, promote, and retain trade, commerce, industry, and employment opportunities, agriculture, and agribusiness;

(H) Purchase or lease of equipment;

(I) Operating expenses;

(J) Housing projects;

(K) Any project for the purposes of acquiring, constructing, equipping, maintaining, and operating regional commerce and

trade center facilities suitable for housing conventions and trade shows as well as cultural, political, musical, educational, athletic, and other events, in order to provide for the establishment, development, and maintenance of commerce and trade;

(L) Any project or purpose described in or permitted under any appropriations to the department;

(M) Any project or purpose described in or permitted under any grant made to, or to be made by or through, the department;

(N) Any project or purpose provided for in the federal Housing and Community Development Act of 1974, as amended, or any successor to the Housing and Community Development Act of 1974;

(O) Any project or purpose provided for in the federal Public Works and Economic Development Act of 1965, as amended, or any successor to the Public Works and Economic Development Act of 1965;

(P) Any project or purpose authorized by federal or state law; or

(Q) Any other project or purpose consistent with the duties, responsibilities, functions, power, and authority of the department.

(c) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the department. The department's actions in this respect may be taken for itself or on behalf of qualified local governments or other eligible recipients. The department's power and authority under this subsection includes, but shall not be limited to, the following:

(1) The department may apply on behalf of qualified local governments or other eligible recipients for receipt of state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77. If such an application is approved, or if state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77 are otherwise made available to the department, the department may be authorized by the Governor to disburse such emergency funds to the local government or other eligible recipient; and

(2) The department may accept on behalf of qualified local governments or other eligible recipients funds provided to the department by an executive order of the Governor and may disburse such funds to such local governments or other eligible recipients. The eligible recipient and the terms under which such funds are made available for use by the eligible recipient shall be specified in the executive order and shall be made a part of any writing or contract between the department and the eligible recipient.

(d) The department is authorized and shall have all powers necessary to participate in federal programs and to comply with laws relating thereto.

(e) The governing authority of any county, municipality, or combination thereof may expend public funds received from the department to perform any public service or public function as authorized under the terms specified by the department or, in the absence of any such terms, as otherwise authorized by the Constitution or by law or to perform any other service or function as authorized by the Constitution.

(f) The department shall make available to any state agency or authority assigned to the department for administrative purposes all funds made available to the department for the use of any such state authority or agency. The department may make available funds to such state agencies or authorities for any lawful purposes of any such state agencies or authorities.

(g) The power and authority of the department under this Code section to make available to local governments or any other eligible recipient any funds shall be limited by the Constitution and laws of the state, and as specified in this Code section, but shall not otherwise be limited.

(h) Pursuant to Article VII, Section III, Paragraph III of the Constitution and as otherwise may be authorized, all grants and other disbursements of funds made by the department or from the emergency fund through the department prior to July 1, 1989, are approved, ratified, and confirmed.

(i) There is established within the department a state community development program. Funds may be appropriated to such a program by line item reference in any appropriations Act. Using such funds as may be appropriated the department may provide assistance to eligible local governments that are qualified to participate in the state administered federal community development block grant program, in the form of grants, loans, loan guarantees, or any combination thereof. Nothing contained in this subsection shall be construed to limit any other powers of the department. (Code 1981, § 50-8-8, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1129, § 3; Ga. L. 2000, p. 1423, § 1; Ga. L. 2008, p. 181, § 18/HB 1216; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2010, p. 949, § 1/HB 244.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “Code Section 20-2-315” was substituted for “Code Section 20-2-314” at the end of the second sentence in the introductory paragraph of subsection (a).

Editor’s notes. — Ga. L. 2000, p. 1129, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Equity in Sports Act.’”

U.S. Code. — The federal Housing and

Community Development Act of 1974, referred to in subparagraph (b)(6)(N), appears mainly as 42 U.S.C. § 1437 et seq. The federal Public Works and Economic Development Act of 1965, referred to in subparagraph (b)(6)(O), appears as 42 U.S.C. § 3121 et seq.

Administrative rules and regulations. — Local development fund grants, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Department of Community Affairs, Local Development Fund Grants, Chapter 110-6-1.

Financial assistance grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-13-1.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 168 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1967, pp. 252 and 258, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Use of funds by planning and development commissioners. — Department of Community Development (now Department of Community Affairs) is not legally responsible for the manner in which the area planning and development commissions utilize funds made available to the commissions by the General Assembly through the department; those commissions are basically self-governing entities, not state agencies or political subdivisions. 1974 Op. Att'y Gen. No. 74-73 (decided under Ga. L. 1967, pp. 252 and 258).

Independent determination of grant eligibility. — State agency making grants to local governments must independently exercise the agency's statutory discretion in determining eligible applicants and may not limit eligibility solely on the basis of an administrative document of the General Assembly. 1993 Op. Att'y Gen. No. 93-19.

Eligibility of area planning and development commissions. — Department of Community Affairs has responsibility for determining eligibility of area planning and development commissions for funds. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

Identification of recipients. — Since authority under this former section was merely to "make available such funds as may be appropriated by the General Assembly," the Department of Community Affairs should not have to identify any particular recipients. The legislature will itself identify recipients. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

Housing assistance programs. — When the funds are not sought to create a planning service or to provide technical assistance, information, or advice in accordance with the purposes of Title II of the Housing and Community Development Act of 1974 (42 U.S.C. § 1437 et seq.), the department does not have the requisite statutory authority to apply for, receive, or administer federal grants under the section 8 housing assistance payments program for existing units established pursuant to such Act. 1976 Op. Att'y Gen. No. 76-15 (decided under Ga. L. 1967, pp. 252 and 258).

No discretion in disbursement of funds made available. — Department of Community Affairs has responsibility to disburse funds to area planning and development commissions. However, this disbursement cannot be contingent on the department's views of either the use made of moneys or adequacy of record-keeping procedures. In short, the department has no discretion in that disbursement. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

50-8-9. Contracts with public and private entities or individuals.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall have the power to enter into contracts with local governments, school districts, state agencies, state authorities, and other public and private entities or individuals for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the department or exercising the power and authority of the department. No such contract shall constitute a donation or gratuity or the forgiveness of any debt or obligation owing to the public. No such contract shall constitute or be intended to constitute security for bonds or other obligations issued by any public agency, public corporation, or authority. No such contract shall constitute a pledge or loan of the credit of the state to any individual, company, corporation, or association, and the state, through the department, shall not become a joint owner or stockholder in or with any individual, company, association, or corporation.

(b) The power and authority of the department under this Code section to enter into contracts shall be limited to entering into contracts permitted under the Constitution and laws of the state and as specified in this Code section but shall not otherwise be limited.

(c) The department shall have the power to enter into contracts with the Georgia Housing and Finance Authority for any purpose necessary or incidental in assisting the Georgia Housing and Finance Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Housing and Finance Authority and not on behalf of the department; and provided, further, such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Housing and Finance Authority, including the provision for joint or complementary services, within the scope of their respective powers.

(d) Reserved.

(e) The department shall have the power to enter into contracts with the OneGeorgia Authority for any purpose necessary or incidental in assisting the OneGeorgia Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the OneGeorgia Authority and not on behalf of the department; and provided, further, that such assistance shall not include the

authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the OneGeorgia Authority, including the provision for joint or complementary services, within the scope of their respective powers. (Code 1981, § 50-8-9, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 7; Ga. L. 1997, p. 143, § 50; Ga. L. 1998, p. 1386, § 5; Ga. L. 2002, p. 1059, § 2; Ga. L. 2005, p. 306, § 5/SB 125.)

Cross references. — Parks, Historic Areas, Memorials, and Recreation, T. 12, C. 3.

50-8-10. Coordination of policies, programs, and actions of governments; research center on intergovernmental relations; leadership and community development programs.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, comprehensive plans of all levels of government consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments;

(2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and

(3) The department may consult with, meet with, confer with, and cooperate with the executive or legislative authorities of other states, with representatives of municipalities and counties of other states, with other representatives of governments, with representatives of private entities, and with others for the purpose of furthering the coordination of programs and policies affecting local government affairs within this state.

(b) The department shall serve as the state's clearing-house and research center on intergovernmental relations, including relationships

among federal, state, and local levels of government and, to this end, the department shall:

(1) Monitor, review, analyze, and communicate with and to others with respect to actions and developments in the United States Congress, in the federal agencies, and in other states which affect local governments or which may affect relations between the state and any local governments; and

(2) Coordinate its activities with the office of the Governor, other state agencies and authorities, and the state's members of the United States Congress.

(c) The department may provide, supervise, or coordinate leadership and community development programs for local governments and other programs with respect to local government affairs. The department may develop pilot programs or projects designed to address the problems and needs of local government. (Code 1981, § 50-8-10, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “and,” was substituted for “, and” following “levels of government” near the end of the introductory language of subsection (b).

50-8-11. Power to take action for furtherance of purposes of department; disposition of revenues.

(a) The department shall have the duty, responsibility, power, and authority to take all action necessary to further the purposes of the department, without regard for whether any such duty, responsibility, power, or authority is specifically mentioned in this article or otherwise specifically granted by law. Without limiting the general nature of this Code section:

(1) The department shall have all duties, responsibilities, power, and authority granted or specified under or pursuant to any other laws of the state and any executive orders issued by the Governor prior to July 1, 1989. To the extent permitted by law, the Governor may, by executive order issued on or after July 1, 1989, authorize the department to take specific action in furtherance of the purposes of the department; and in that event, the department shall take such action;

(2) The department shall promote and encourage assistance from private entities and individuals in carrying out and performing local government services;

(3) The department shall assist local governments in developing, promoting, and retaining trade, industry, commerce, and employment opportunities;

(4) The department may define, identify, and establish criteria or requirements for local governments or others to participate with or to use any local government services; and

(5) The department may receive, use, and spend money received from the state for any of the purposes of the department.

(b) Revenues for all fees and charges imposed or otherwise charged by the department for local government services shall be paid into the general fund of the state treasury, except that charges intended to reimburse expenses incurred by the department shall be used to reimburse the department for such expenses. (Code 1981, § 50-8-11, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

50-8-12. No limitations by article on county or municipal zoning power.

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning. (Code 1981, § 50-8-12, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

RESEARCH REFERENCES

ALR. — Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 ALR4th 294.

50-8-13. Authorities and agencies assigned to department.

(a) Authorities or agencies may be assigned to the department for administrative purposes in accordance with Code Section 50-4-3. The following authorities are assigned to the department in accordance with such Code section:

- (1) The Georgia Environmental Finance Authority; and
- (2) The Georgia Housing and Finance Authority.

(b) The department may induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform any local government services and to perform its own statutory function. (Code 1981, § 50-8-13, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 2010, p. 949, § 1/HB 244.)

50-8-14. Exemption from “Georgia Administrative Procedure Act.”

The administration of programs, grants, and other activities covered by this chapter shall not be covered by, subject to, or required to comply

with or satisfy any provision of Chapter 13 of this title, known as the “Georgia Administrative Procedure Act.” (Code 1981, § 50-8-14, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-15. Rights of state employees transferred from State Building Administrative Board; validity of board’s legal contracts.

(a) State employees transferred from the State Building Administrative Board on March 31, 1980, shall continue to retain all rights, entitlements, and privileges as state employees and participate in the various state personnel programs as they were previously entitled or otherwise authorized.

(b) Any legal contracts entered into by the State Building Administrative Board which were in effect on March 31, 1980, are transferred and shall continue in effect under the Department of Community Affairs until their normally prescribed termination or expiration. (Code 1981, § 50-8-15, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-16. Rights of state employees transferred from Bureau of Community Affairs; validity of bureau’s legal contracts.

(a) State employees transferred from the Bureau of Community Affairs to the Department of Community Affairs on July 1, 1977, shall retain all rights, entitlements, and privileges as state employees and shall participate in the various state personnel programs as they were previously entitled or authorized to participate.

(b) Any legal contracts entered into by the bureau which were in effect on July 1, 1977, are transferred and shall continue in effect under the Department of Community Affairs under their normally prescribed termination or expiration. (Code 1981, § 50-8-16, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-17. Employees serve in classified and unclassified service.

Employees of the department shall serve in the classified and unclassified service as defined by Code Section 45-20-2. (Code 1981, § 50-8-17, enacted by Ga. L. 1996, p. 872, § 8; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-102/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of this Code section for the former provisions, which read: “Employees of the department shall serve in the unclassified service of the State Personnel Administra-

tion as defined by Code Section 45-20-6, provided that employees who serve in the classified service of the State Personnel Administration as defined by Code Section 45-20-6 may elect to remain in the classified service and be governed by the

provisions thereof; provided, however, that if such person accepts a promotion or transfer to another position, he or she shall become an employee in the unclassified service.”

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

50-8-18. Energy efficient construction of major state-funded facility projects; short title; legislative findings; “major facility project” defined.

(a) This Code section shall be known and may be cited as the “Energy Efficiency and Sustainable Construction Act of 2008.”

(b) The General Assembly finds that the welfare of this state is enhanced by the promotion of effective energy and environmental standards for construction, rehabilitation, and maintenance of state-funded facilities and that such standards in turn improve this state’s capacity to design, build, and operate high-performance buildings, contributing to economic growth, promoting job development, and increasing energy conservation.

(c) For purposes of this Code section, “major facility project” means a state-funded:

(1) New construction building project of a building exceeding 10,000 square feet;

(2) A renovation project that is more than 50 percent of the replacement value, as determined by the Department of Administrative Services Risk Management Division, of the facility, a change in occupancy, or any roof replacement project exceeding 10,000 square feet; or

(3) A commercial interior tenant fit-out project exceeding 10,000 square feet of leasable area where the state is intended to be the lessor of such property.

A major facility project shall not include a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and shall not include a state owned building that is on the historical registry or any local, county, or municipal building.

(d) Consistent with the intent of this Code section, the department, in consultation with the Georgia State Finance and Investment Com-

mission, shall adopt policies and procedures as recommended standards for all buildings owned or managed by this state that:

- (1) Optimize the energy performance;
- (2) Increase the demand for construction materials and furnishings produced in Georgia;
- (3) Improve the environmental quality in this state by decreasing the discharge of pollutants from such state buildings;
- (4) Conserve energy and utilize local and renewable energy sources;
- (5) Protect and restore this state's natural resources by avoiding the development of inappropriate building sites;
- (6) Reduce the burden on municipal water supply and treatment by reducing potable water consumption;
- (7) Establish life cycle assessments as the appropriate and most efficient analysis to determine a building project's environmental performance level; and
- (8) Encourage obtaining Energy Star designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(e) All major facility projects may be designed, constructed, and commissioned or modeled to exceed the standards set forth in ASHRAE 90.1.2004 by 30 percent where it is determined by the department that such 30 percent efficiency is cost effective based on a life cycle cost analysis with a payback at no more than ten years. Commissioning or modeling must be performed by a professional engineer, design professional, or commissioning agent using software methodology approved by the Internal Revenue Service, the Department of Energy, current ASHRAE standards, or other similar methodology. For all major renovation projects, such requirements shall apply to the specific building assemblies, envelope components, and equipment involved in the project.

(f) All major facility projects shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992.

(g) To achieve sustainable building standards, construction projects may utilize a nationally recognized high performance energy modeling and environmental building rating system; provided, however, that any such rating system that uses a material or product based credit system that operates to the detriment of materials or products manufactured or

produced in Georgia shall not be utilized. The department shall designate rating systems that meet these criteria and is authorized to establish its own alternative rating system. All major facility projects shall include Georgia products such that not less than 10 percent of all building materials used in a project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available in a manner consistent with the purposes of this Code section.

(h) A professional engineer, design professional, or commissioning agent shall certify that the building project's systems for heating, ventilating, air conditioning, energy conservation, and water conservation are installed and working properly to ensure that each building project performs according to the building's overall environmental design intent and operational objectives. (Code 1981, § 50-8-18, enacted by Ga. L. 2008, p. 224, § 4/SB 130.)

Editor's notes. — Ga. L. 2008, p. 224, § 7/SB 130, not codified by the General Assembly, provides that this Code section shall apply to design agreements for major facilities projects entered into on or after July 1, 2010.

U.S. Code. — The Energy Policy Act of 1992, referred to in subsection (f), is codified at 42 U.S.C. § 13201 et seq.

ARTICLE 2

REGIONAL COMMISSIONS

Editor's notes. — Ga. L. 2008, p. 181, § 5/HB 1216, effective July 1, 2009, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 50-8-30 through 50-8-34, 50-8-34.1, 50-8-35 through 50-8-39, 50-8-39.1, and 50-8-40 through 50-8-46, relating to regional development centers, and was based on Ga. L. 1989, p. 1317,

§ 3.1, and Ga. L. 1992, p. 1271, § 1; Ga. L. 1992, p. 2108, § 1; Ga. L. 1993, p. 1374, §§ 1-4; Ga. L. 1994, p. 1636, §§ 2-9; Ga. L. 1995, p. 1302, § 15.

Administrative rules and regulations. — Minimum standards and procedures for regional planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-6.

PART 1

LEGISLATIVE FINDINGS

Editor's notes. — The existing provisions of Article 2 were designated as Part

1 by Ga. L. 2010, p. 468, § 1/HB 567, effective July 1, 2010.

50-8-30. Legislative findings and intent; construction of article.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments.

The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. Coordinated and comprehensive planning by local governments, under direction from the state, is necessary in order to serve these essential public interests of the state. The purpose of this article is to provide for regional commissions to develop, promote, and assist in establishing coordinated and comprehensive land use, environmental, transportation, and historic preservation planning in the state, to assist local governments to participate in an orderly process for coordinated and comprehensive planning, to assist local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens and advance positive governmental relations among the state, regional, and local levels, and to prepare and implement comprehensive regional plans which will develop and promote the essential public interests of the state and its citizens. This article shall be construed liberally to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV. (Code 1981, § 50-8-30, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

Cross references. — Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

Administrative rules and regulations. — Minimum planning standards and procedures for local comprehensive planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planning, Chapter 110-3-2.

Minimum standards and procedures for local comprehensive planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-1.

Minimum standards and procedures for regional planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-6.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-30, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Participation of county or municipality as member of Atlanta Regional

Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are

obtained. 2004 Op. Att’y Gen. No. 2004-1
(decided under former O.C.G.A.
§ 50-8-30).

50-8-31. Definitions.

As used in this article, the term:

- (1) “Commission” means a regional commission established pursuant to this article, including its predecessor, a “regional development center.”
- (2) “Commissioner” means the commissioner of community affairs.
- (3) “Comprehensive plan” means any plan by a county or municipality covering such county or municipality or any plan by a regional commission covering the commission’s region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with Article 1 of this chapter.
 - (A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;
 - (B) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;
 - (C) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department; or
 - (D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department.
- (4) “Conflict” means any conflict, dispute, or inconsistency arising:
 - (A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;
 - (B) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;
 - (C) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department; or
 - (D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department.
- (5) “Constitution” means the Constitution of the State of Georgia.
- (6) “Contract” means any contract, agreement, or other legally binding arrangement.
- (7) “Coordinated and comprehensive planning” means planning by counties and municipalities and by regional commissions in accordance with the minimum standards and procedures.

(8) "Council" means the council governing each regional commission.

(9) "County" means any county of this state, including any consolidated governments.

(10) "Department" means the Department of Community Affairs.

(11) "Governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

(12) "Government" means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.

(13) "Governmental services" means those necessary services provided by local units of government of this state.

(14) "Human service programs" means any activity authorized by law to be undertaken by the state or by any unit of local government in which it is undertaken, the funds for which program are provided by or through the United States government, an adjoining state, this state, any unit of local government, any agency or instrumentality of the foregoing, or a public or private organization, the purpose of which is to provide assistance to and relieve the special burdens of the young, the indigent, the aged, persons with disabilities, the unemployed, or the ill.

(15) "Local government" means any county, municipality, or other political subdivision of the state; any regional commission; any public agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any lawful purposes but shall not include school districts.

(16) "Local plan" means the comprehensive plan for any county or municipality.

(17) "Minimum standards and procedures" means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as

established by the department. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department, in accordance with Article 1 of this chapter.

(18) "Municipality" has the same meaning as provided in Code Section 36-30-1.

(19) "Necessary" means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(20) "Nonpublic council member" means any council member who is a resident of a county within the region, who is not an elected or appointed official or employee of any county or municipality, and who is appointed as a nonpublic member for that county pursuant to subsection (b) of Code Section 50-8-34.

(21) "Nonpublic funds" means the servicing and processing fees which are received by a nonprofit corporation for administering federal or state revolving loan programs or loan packaging programs.

(22) "Qualified local government" means a county or municipality which:

(A) Has a comprehensive plan in conformity with the minimum standards and procedures;

(B) Has made its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures; and

(C) Has not failed to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department, reflects a good faith effort to resolve any conflict.

(23) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(24) "Regional commission" means a commission established under this article.

(25) "Regional plan" means the comprehensive plan for a region.

(26) "State" means the State of Georgia. (Code 1981, § 50-8-31, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-31, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Authority to loan or borrow funds. — Expanded duty and authority given Regional Development Centers under

O.C.G.A. § 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-31).

50-8-32. Creation of regional commissions.

Regional commissions are created and established as public agencies and instrumentalities of their members which shall facilitate coordinated and comprehensive planning in conformity with minimum standards and procedures established pursuant to law. Regional commissions shall function as the regional planning entity for land use, environmental, transportation, and historic preservation planning in each designated region of the state. Each such agency and instrumentality shall be known as a regional commission and shall be designated, by name for all purposes, with such identifying words before the term "regional commission" as the Board of Community Affairs may, from time to time in accordance with the provisions of subsection (f) of Code Section 50-8-4, choose and designate by official action. The number of regional commissions and the region within which each regional commission shall operate shall initially be established and subsequently may be changed from time to time by the Board of Community Affairs pursuant to Code Section 50-8-4. Each county shall be wholly within the region of one regional commission, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the Board of Community Affairs shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional commission. (Code 1981, § 50-8-32, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-32, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

No authority to create nonprofit corporation. — Because a Regional De-

velopment Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-32).

Participation of county or municipality as member of Atlanta Regional

Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1 (decided under former O.C.G.A. § 50-8-32).

50-8-33. Municipal and county membership; annual dues; distribution of state funds.

(a) Each municipality and county in the state shall automatically be a member of the regional commission for the region which includes the municipality or county, as the case may be.

(b)(1) Each county and municipality in the state shall pay the annual dues for membership in its regional commission. Each county and the municipalities within such county shall continue to use the arrangement for the payment of dues which was in effect on June 30, 2009, for the payment of dues to the regional development centers which preceded the regional commissions created by this article until a revised arrangement for the amount, apportionment, and payment of annual dues is established by the county and the municipalities within such county. If an arrangement for the payment of such dues is structured so that a county pays dues only on behalf of residents of the unincorporated areas of the county, then the annual dues paid by such county shall come solely from revenues derived from the unincorporated areas of the county.

(2) State funds appropriated to the department and available for the purpose of assisting regional commissions shall be distributed in accordance with this paragraph. The department shall establish a minimum funding amount for regional commissions, conditioned upon the amount of state funds appropriated, and a supplemental funding formula to be used for the distribution of available state funds in excess of the minimum funding amount. While each regional commission must assess and collect annual dues in the amount of 25¢ for each resident of each county within the regional commission, based upon the most recent estimate of population approved by the department for this purpose, to be eligible for any minimum funding from state appropriated funds, each regional commission must assess and collect annual dues in the aggregate averaging a minimum amount of \$1.00 for each resident of each county within the regional commission, based upon the most recent estimate of population approved by the department for this purpose. To be eligible for any supplemental funding, each regional commission shall apply to the department in a manner established by the department to determine eligibility for funds distributed pursuant to the supplemental funding formula.

(3) The initial supplemental funding formula established by the department to be used for the distribution of available state funds in excess of the minimum funding amount shall be promulgated by the department in accordance with the procedures of Code Section 50-8-7.2. (Code 1981, § 50-8-33, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-34. Councils of regional commissions; membership; terms of membership; voting; officers; powers.

(a) The council of each regional commission shall establish policy and direction for the regional commission and shall perform such other functions as may be provided or authorized by law.

(b) The manner of selecting such regional commission council members shall be as prescribed by its bylaws and membership on the council shall be determined as follows:

(1) The council shall include the chief elected official of each county governing body in the region for a period of time concurrent with each such elected official's term of elected office. If the chief elected official for a county is unable to serve on the council, he or she shall appoint another elected county official. In the case of a consolidated government where there is not another municipality located within the boundaries of the county, a second member of such consolidated government shall be appointed to the board;

(2) The council shall include one elected official from one municipality in each county in the region for a period of time concurrent with each such elected official's term of elected office;

(3) The council shall include three residents of the region appointed by the Governor, each for a term of two years. One of such three appointees shall be a member of a school board located within the region or a superintendent of schools within the region, and two of such three appointees shall be nonpublic council members;

(4) The council shall include one nonpublic council member appointed by the Lieutenant Governor for a term of two years and one nonpublic council member appointed by the Speaker of the House of Representatives for a term of two years; and

(5) The council may include any additional members determined necessary by the commissioner for purposes of complying with laws or regulations, or otherwise. Any such additional members shall be selected by the council and shall serve for a term of one year.

(c) The term of a member shall terminate immediately upon:

(1) Resignation by a member;

(2) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(3) Any change in local elective office or residence of a member which would cause the composition of the council not to comply with the requirements of subsection (b) of this Code section.

(d) Each member of the council shall have one vote. Establishment of a quorum for purposes of the conduct of business shall be determined by the bylaws of the regional commission.

(e) Each regional commission council shall elect from among its council members a chairperson, vice chairperson, and secretary or treasurer who shall serve for a term of two years and until their successors are elected and qualified. Such elections shall be held biennially at a meeting designated for that purpose in the regional commission's bylaws.

(f) Each council shall exercise the following powers:

(1) The powers, duties, responsibilities, and functions enumerated in Code Section 50-8-35;

(2) The appointment and removal of a full-time executive director for the regional commission;

(3) The establishment of such committees as the council shall deem appropriate;

(4) The adoption of an annual work program for the regional commission;

(5) The adoption of an annual budget to support the annual work program; and

(6) The determination of the policies and programs to be implemented and operated by the regional commission as may be provided or authorized by law. (Code 1981, § 50-8-34, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-34.1. Executive director of commission; performance standards and annual performance review.

(a) Each regional commission shall have an executive director who shall serve at the pleasure of the council and who shall be subject to appointment and removal by a majority vote of the members of the council. The executive director shall perform such duties as assigned by the council.

(b) Each regional commission council shall require performance standards for measurement of the activities of the regional commission.

The council shall conduct an annual performance review of the executive director of the regional commission measured by standards developed by the council. (Code 1981, § 50-8-34.1, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-35. General powers.

(a) Each regional commission, as authorized by the council of such regional commission and consistent with federal and state law, shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. Each commission may exercise the following power and authority:

(1) Each commission may adopt bylaws and make rules and regulations for the conduct of its affairs;

(2) Each commission may make and enter into all contracts necessary or incidental to the performance of its duties and functions so long as the chairperson of the commission's council and the executive director of the commission jointly execute any such contracts between a regional commission and state or federal agencies, or any other such contracts as determined by the bylaws or the council. Neither a commission, nor any nonprofit corporation established or controlled by that commission, may enter into any contract obligating that regional commission or nonprofit corporation to perform services for any political subdivision, individual, or business entity located wholly outside the boundaries of that commission's region, except that one commission, on its own behalf and not on behalf or for the direct benefit of any political subdivision, individual, or business entity within that commission's boundaries, may contract with another commission to provide services for the benefit of one or both commissions. A commission may contract with any state agency for coordinated and comprehensive planning covering areas not within the territorial boundary of the commission, provided that any such contract is made with the approval of the regional commission's council;

(3) Each commission may acquire and dispose of real and personal property;

(4) Each commission may utilize the services of the Department of Administrative Services;

(5) Each commission may prepare studies of the area's resources as they affect existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, local governments, and any other matters relating to area planning and development;

- (6) Each commission may collect, process, and analyze, at regular intervals, the social and economic statistics for the region, which statistics are necessary to planning studies, and make the results available to the general public;
- (7) Each commission may participate with local, state, or federal governmental agencies, educational institutions, and public and private organizations in the coordination and implementation of research and development activities;
- (8) Each commission may cooperate with all units of local government and planning and development agencies within the commission's region and coordinate area planning and development activities with those of the state and of the units of local government within the commission's region as well as neighboring regions and with the programs of federal departments, agencies, and regional commissions; and provide such technical assistance, including data processing and grant administration services for local governments, as may be requested of it by a unit or units of local government within the commission's region; and such technical assistance shall not be limited to planning and development activities but may include technical assistance of any nature requested by a unit or units of local government within the commission's region;
- (9) Each commission may carry out such other programs as its council or the department shall require from time to time;
- (10) Each commission may, when appropriate, administer funds involving more than one political subdivision;
- (11) Each commission may, upon the signed resolution of its council and written approval by each unit of local government affected, initiate, continue, or renew arrangements with the United States government, an adjoining state, this state, a unit of local government, any agency or instrumentality of the foregoing, or a public or private organization for the management, administration, or operation of human service programs by such regional commission. The commission shall be permitted to enter into contracts to provide, or to provide directly with the council's approval, governmental services on behalf of the local governments. Direct services shall be provided to a municipality or county only after such municipality or county has passed a resolution requesting such services and the council has approved the municipality's or county's resolution. Contracts for direct services pursuant to this paragraph shall be for one year, subject to renewal. Direct services shall not include human service programs. Contracts for government services may specifically authorize governmental services other than human service programs in writing from time to time and for any specified period of time.

Services provided by human services programs may be provided if the regional commission enters into contracts with other authorized entities, including units of local government, for the delivery of goods or services to individual consumers. A commission providing direct services pursuant to this paragraph shall not provide such services on a for profit basis. Regional commissions shall be authorized to provide technical assistance to units of local government in areas of governmental services; and

(12) Each commission may provide the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:

(A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise;

(B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;

(C) Sick leave, annual leave, military leave, and holiday leave; and

(D) Any other similar benefits including, but not limited to, death benefits.

(b) Each commission shall adopt personnel policies and practices with specific reference to job descriptions and qualifications. Minimum qualifications for the professional personnel of each regional commission shall be established by the council of the regional commission.

(c) Each commission shall undertake and carry out such planning and technical assistance activities as its council or the department may deem necessary for the development, preparation, and implementation of comprehensive plans for the commission's region and for municipalities and counties within the commission's region and such planning and technical assistance activities as its council or the department may deem necessary for coordinated and comprehensive planning within the commission's region. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) A commission may coordinate and assist local governments in preparing local plans for submission to the regional commission;

(2) A commission may provide technical planning assistance to local governments;

(3) A commission may develop and prepare a local plan for a county or municipality if the county or municipality enters into a contract with a commission for that purpose;

(4) A commission may require that comprehensive plans within its region include elements in addition to those established by the

department as minimum standards and procedures but, before imposing any such requirement, the commission shall have received the department's approval of any additional elements to be included in such comprehensive plans;

(5) A commission may establish within its comprehensive plan goals, objectives, policies, and recommendations consistent with those established by the Governor's Development Council or by the department, for its region; and

(6) Each commission shall prepare and adopt a regional plan and submit the regional plan to the department. The regional plan shall take into consideration issues and opportunities facing the region, the commissioner's recommendations to address such issues, and local plans within the region. The regional plan may be prepared but shall not be adopted by the council until after a proposed regional plan has been made public, reviewed, and approved as meeting the minimum requirements of the department; and after the council has held, or caused to be held by a designated hearing officer, a public hearing on the regional plan, in accordance with such procedures as the department may establish.

(d) Each commission shall participate in compiling a Georgia data base and network, coordinated by the department, to serve as a comprehensive source of public information available, in an accessible form, to local governments, state agencies, and members of the General Assembly.

(e) A commission shall serve as liaison with other governments, including federal government agencies and state agencies. In this capacity, a commission may administer programs within the state upon the request of its council and may administer federal or state government programs upon designation by the federal or state government. Each commission shall be designated as the official planning agency for all state and federal programs to be carried out in the region if such designation is required and if the department concurs in such designation. A commission may take all action and shall have all power and authority necessary to carry out its responsibilities, duties, and functions under any such state or federal programs.

(f)(1)(A) In order to accomplish the intent of subsection (e) of this Code section, each regional commission is authorized to create nonprofit corporations to administer federal or state revolving loan programs or loan packaging programs, and to administer federal or state housing and development programs and funds available only to nonprofit corporations. Each such nonprofit corporation must be authorized by the commission's council and each unit of local government affected.

(B) Any nonprofit corporation which, prior to April 1, 1994, has been created by a commission or its predecessor and has had articles of incorporation which are regular on their face accepted for filing by the Secretary of State shall be recognized as and have legal status as a validly created nonprofit corporation under the laws of this state for all purposes, notwithstanding the requirements of subparagraph (A) of this paragraph and notwithstanding any lack of express statutory authority on the part of the commission to carry out such incorporation at the time of filing of the articles of incorporation. Nothing in this subparagraph, however, shall excuse such a nonprofit corporation from complying on and after April 1, 1994, with any and all requirements imposed by law for continuation of its corporate existence in the same manner as other nonprofit corporations created under this paragraph are required to comply with legal requirements for their continued existence.

(2) Employees and any other authorized representatives of a nonprofit corporation created pursuant to paragraph (1) of this subsection are authorized to expend nonpublic funds of such corporation for the business meals and incidental expenses of bona fide industrial prospects and other persons who attend any meeting at the request of the nonprofit corporation to discuss the location or development of new business, industry, or tourism within the commission's region. All such expenditures shall be verified by vouchers showing date, place, purpose, and persons for whom such expenditures were made. All receipts of nonpublic funds shall be evidenced by vouchers showing the date, amount, and source of each receipt. A schedule shall be included in each annual audit which reports the beginning balance of unexpended nonpublic funds; the date, amount, and source of all receipts of nonpublic funds; the date, place, purpose, and persons for whom expenditures were made for all such expenditures of nonpublic funds; and the ending balance of unexpended nonpublic funds. The auditor shall verify and test such beginning balances, receipts, expenditures, and ending balances sufficient to express an opinion thereon in accordance with generally accepted government auditing standards.

(3) A nonprofit corporation shall keep books of account reflecting all funds received, expended, and administered by the nonprofit corporation which shall be independently audited at least once in each fiscal year during which a nonprofit corporation functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a nonprofit corporation and shall annually review the audit procurement process to determine compliance with established poli-

cies and procedures. The nonprofit corporation shall be responsible for the costs associated with such audit. The auditor's report shall be presented to the commissioner, who shall make such report available to each council member within the region and to the Board of Community Affairs. The books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each nonprofit corporation shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner.

(4) Each nonprofit corporation shall submit to the department copies of all filings made to federal, state, or local taxing authorities, including filings related to tax exemptions simultaneous with such filings.

(5)(A) Each annual audit report of a nonprofit corporation shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the nonprofit corporation's fiscal year. In addition to the audit report, the nonprofit corporation shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(B) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in paragraph (3) of this subsection. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or written comments, notify the nonprofit corporation and the auditor who performed the audit and shall submit to them a list of the deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the commission related to the nonprofit corporation, the chief elected official of each county and municipality within the commission's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the commission's region.

(C) If the state auditor has not received any required audit or written comments by the date specified in subparagraph (A) of this paragraph, the state auditor shall within 30 days of such date notify the nonprofit corporation that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the commission related to the nonprofit

corporation, the chief elected official of each county and municipality within the related commission's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the related commission's region.

(D) The state auditor, for good cause shown by those nonprofit corporations in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same nonprofit corporation.

(6) A copy of the report and of any comments made by the state auditor pursuant to subparagraph (B) of paragraph (5) of this subsection shall be maintained as a public record for public inspection during the regular working hours at the principal office of the nonprofit corporation and the related commission.

(7) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the related commission's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once a week for two consecutive weeks and shall state that the nonprofit corporation has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(8) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same nonprofit corporation.

(g) A commission shall be prohibited from either creating or controlling or causing to be created any nonprofit corporation, except as authorized in paragraph (1) of subsection (f) of this Code section.

(h) Neither a commission nor a nonprofit corporation either created or controlled or caused to be created by the commission shall administer any federal program which prohibits the state auditor from conducting a performance audit relative to such program.

(i) In any case where a commission contracts with a state agency, the contract shall include a provision requiring cancellation of the contract if the department determines that the commission or a nonprofit corporation either created or controlled or caused to be created by the commission is not fully cooperating with a performance audit conducted by the department.

(j) Each commission shall develop a department approved continuing education program for professional staff members of such commissions. (Code 1981, § 50-8-35, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 50-8-35, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Performance audits of regional development centers and nonprofit corporations. — Department of Community Affairs had statutory authority to conduct

performance audits of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. *Coastal Ga. Regional Dev. Ctr. v. Higdon*, 263 Ga. 827, 439 S.E.2d 902 (1994) (decided under former O.C.G.A. § 50-8-35).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. §§ 50-8-34 and 50-8-35, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Public accountability. — Regional development center is not subject to the minimum budget and auditing requirements set forth in O.C.G.A. § 36-81-1 et seq.; however, a center is subject to public accountability under other provisions of state law. 1990 Op. Att'y Gen. No. 90-37 (decided under former O.C.G.A. § 50-8-35).

Regional development center lacks authority to abrogate the center's duty to be accountable for the nonprofit corporations the center is authorized to create. 1996 Op. Att'y Gen. No. 96-8 (decided under former O.C.G.A. § 50-8-35).

Administration of Job Training Partnership Program by Private Industry Council. — Regional development center is authorized to contract with

a Private Industry Council to administer the Job Training Partnership Program within the council's service delivery area as long as the council's service delivery area overlaps the territorial boundary of the regional development center. 1990 Op. Att'y Gen. No. 90-27 (decided under former O.C.G.A. § 50-8-35).

Use of grant funds. — Regional Development Center cannot accept grant funds for a purpose which is either specifically prohibited or which the center lacks authority to perform, except that, upon the signed resolution of the center's board and written approval by each unit of local government affected, a Regional Development Center may enter into contracts with other authorized entities for the delivery of human service programs; provided, the service delivery area overlaps the territorial boundaries of the Regional Development Center. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Delivery of goods and services. — Regional Development Center would not

be prohibited from performing eligibility certification under the Job Training Partnership Act, 29 U.S.C. § 1501 et seq., inasmuch as the “intake” process merely involves screening applicants for appropriate referral to the organization which will actually conduct the training or delivery of services. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Authority to loan or borrow funds.

— Expanded duty and authority given Regional Development Centers under former O.C.G.A. § 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

No authority to create nonprofit corporation. — Because a Regional Development Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

No authority to pay entertainment expenses. — Regional Development Centers, as public agencies and instrumental-

ities of the municipalities and counties in its region, are subject to the Georgia Constitution’s gratuities clause. Absent any specific authorizing statute, the payment of entertainment expenses would be unauthorized. Indeed, such an expenditure would constitute a gratuity in violation of the Georgia Constitution. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Membership in contracting corporation precluded. — Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation created by the RDC, pursuant to former O.C.G.A. § 50-8-35(f)(1), during the period that a contract exists between the two entities. 1993 Op. Att’y Gen. No. 93-1 (decided under former O.C.G.A. § 50-8-35).

Scope of authority. — Regional Development Center has only such powers as are conferred upon it by the legislature, either expressly or by necessary implication. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-34).

Election of nonpublic board members, presence required. — Regional Development Center board member’s right to vote for a nonpublic board member is limited to those board members who are actually present at the time the vote is taken in a legal meeting. 1994 Op. Att’y Gen. No. 94-17 (decided under former O.C.G.A. § 50-8-34).

50-8-36. Review, comment, and recommendation regarding local plans; public meetings and hearings.

(a) Each local plan shall be submitted for review, comment, and recommendation to the appropriate regional commission and shall become effective in accordance with this Code section. Each municipality and county within a region shall submit its local plan to the regional commission for that region for review, comment, and recommendation by the regional commission. The commission shall maintain all local plans which it receives in this manner in files available for inspection by the public.

(b) Within ten days after receipt of a local plan, the regional commission shall notify each municipality or county within its region which may be affected by the local plan of the general nature of the plan, the date of its submission, and the identity of the submitting municipality or county. In addition, any local governments contiguous

to, or operating within, the submitting municipality or county shall be notified by the regional commission in the same manner.

(c) Within 15 days after the regional commission gives the notice required by subsection (b) of this Code section, any local government within the region and any other local government which received notice from the regional commission may present, to the regional commission, its views on the local plan in a public meeting or hearing which shall be held in accordance with rules established by the regional commission with prior approval of the department.

(d) The regional commission shall determine whether the adoption or implementation of the local plan would present any conflict. The regional commission may recommend a modification of the local plan in such a manner as to eliminate any conflict or alleviate any problem or difficulty which such conflict may create. The regional commission's determination shall be in writing, shall be made public, and shall be communicated by written notice given to the municipality or county which submitted the local plan within 15 days after the date of the public meeting or hearing.

(e) The municipality or county which submitted the local plan may request reconsideration of any recommendation by a regional commission within ten days after the regional commission's recommendation is made public. For purposes of such reconsideration, the regional commission shall schedule, announce, and hold a public hearing within 15 days after receipt of the request for reconsideration. Notice of the time and place of any such public hearing shall be given by the regional commission to all members of the regional commission, in accordance with such procedures as the regional commission may establish, subject to the prior approval of the department. The regional commission shall also give such notice to all affected municipalities and counties and appropriate state regulatory boards and agencies.

(f) Within ten days after the public hearing, the regional commission shall either continue its recommendations or modify the recommendations. In either case, the regional commission shall make public its determination and shall give written notice of its determination to the municipality or county which submitted the local plan. (Code 1981, § 50-8-36, enacted by Ga. L. 2008, p. 181, § 5/HB 1216; Ga. L. 2013, p. 1104, § 2/SB 104.)

The 2013 amendment, effective July 1, 2013, deleted former subsection (g), which read: "No municipality or county shall take any action to adopt any local plan, or to put into effect any local plan, until 60 days after the date when the

municipality or county, as the case may be, submitted its complete local plan to the regional commission for review, comment, and recommendation, except that any request for reconsideration of any recommendation by a regional commis-

sion pursuant to subsection (e) of this Code section shall automatically operate to extend the 60 day period to 90 days.”

50-8-37. Review by commission of applications submitted to United States or state or agency thereof.

A regional commission shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the state, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or state or agency thereof, transmit the same to the regional commission for its review. The comments of the regional commission shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the state, or any agency thereof. (Code 1981, § 50-8-37, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-38. Accounting of funds by commission; disclosure; access to documents.

(a) A regional commission shall keep books of account reflecting all funds received, expended, and administered by the regional commission which shall be independently audited at least once in each fiscal year during which a regional commission functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a regional commission and shall annually review the audit procurement process to determine compliance with established policies and procedures. The regional commission shall be responsible for the costs associated with such audit. The auditor’s report shall be presented to the governing body of each member within the region and to the department. Beginning July 1, 1990, the books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each regional commission shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner. The state auditor shall conduct at least triennially a performance audit of all state funds received by each regional commission and the department shall provide funds for such audits. The state auditor shall provide copies of a performance audit of a regional commission to the chief elected official of each county and municipality within the regional commission’s region.

(b) In conducting a performance audit of a regional commission, the state auditor shall be allowed access to all books, records, and documents of the regional commission and all books, records, and documents of any nonprofit corporations either created or controlled or caused to be created by the regional commission, to the extent the state auditor deems necessary.

(c)(1) Each annual audit report of a regional commission shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the regional commission's fiscal year. In addition to the audit report, the regional commission shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(2) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in subsection (a) of this Code section. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or the written comments, notify the regional commission and the auditor who performed the audit and shall submit to them a list of deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the regional commission's region and to each member of the General Assembly whose senatorial or representative district includes any part of the regional commission's region.

(3) If the state auditor has not received any required audit or written comments by the date specified in paragraph (1) of this subsection, the state auditor shall within 30 days of such date notify the regional commission that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the regional commission's region and to each member of the General Assembly whose senatorial or representative district includes any part of the regional commission's region.

(4) The state auditor, for good cause shown by those regional commissions in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same regional commission.

(d) A copy of the report and of any comments made by the state auditor pursuant to paragraph (2) of subsection (c) of this Code section shall be maintained as a public record for public inspection during the regular working hours at the principal office of the regional commission.

(e) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the regional commission's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once a week for two consecutive weeks and shall state that the regional commission has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(f) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same regional commission.

(g) Any other provision of this chapter to the contrary notwithstanding, nothing in this chapter shall be construed to require public disclosure of or access to any documents or information relating to loans made by or assigned to the United States Small Business Administration which are exempt from disclosure based upon the federal Privacy Act of 1974, the federal Freedom of Information Act, or the Code of Federal Regulations.

(h) Notwithstanding any other provision of this chapter, the state auditor shall not be authorized or required to conduct financial or performance audits of any records or documents relating to loans made by or assigned to the United States Business Administration or any other entity or agency of the United States government if said agency's administrator certifies in writing to the state auditor that said records or documents may not be disclosed to state auditors under applicable federal regulations. (Code 1981, § 50-8-38, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 50-8-39, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Performance audits of regional development centers and nonprofit corporations. — Department of Community Affairs had statutory authority to conduct

performance audits of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. *Coastal Ga. Regional Dev. Ctr. v. Higdon*, 263 Ga. 827, 439 S.E.2d 902 (1994) (decided under former O.C.G.A. § 50-8-38).

RESEARCH REFERENCES

ALR. — What are “records” of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 ALR Fed. 571.

50-8-39. Appointment of receiver of assets for protection of creditors upon center's ceasing of operations.

Upon a regional commission's ceasing operations, the local government members of the regional commission shall, within 30 days of cessation of the regional commission's operations, appoint a receiver of the assets of the regional commission for the protection of creditors. The receiver shall be authorized to marshal, sell, or transfer assets, pay liabilities, and assess counties and municipalities which were members of the regional commission. After the completion of such liquidation, a distribution shall be made to the local government members on a pro rata basis according to the amount of contributions such members made to the regional commission. (Code 1981, § 50-8-39, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-40. Notice of intent to designate area-wide or multicounty agency.

When federal or state law or regulations require the designation of an area-wide or multicounty public or private corporation, organization, or agency for multicounty delivery of human service programs, the state agency administering such programs shall send a notice of intent to designate such area-wide or multicounty corporation, organization, or agency to units of local government and the regional commissions in the area to be affected. The notice shall discuss in general the details of the program and, when applicable, possible local government involvement. (Code 1981, § 50-8-40, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-41. Regional development centers succeeded by regional commissions.

Each regional development center in existence as of June 30, 2009, shall automatically be succeeded by the regional commission for the same region as of July 1, 2009, and each such regional commission shall be governed, from and after July 1, 2009, by this article. All contractual obligations, obligations to employees, other duties, rights, and benefits of such regional development center shall automatically become duties, obligations, rights, and benefits of their respective successor regional commissions. (Code 1981, § 50-8-41, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-42. Remaining powers of metropolitan area planning and development commissions.

Any metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, shall also serve as the regional commission for the area covered by such metropolitan area planning and development commission. The duties, responsibilities, and functions and the power and authority granted the metropolitan area planning and development commission by law are, and shall be construed to be, cumulative with, and in addition to, the duties, responsibilities, and functions and the power and authority granted regional commissions by law. In the event of any conflict between the provisions of law governing metropolitan planning and development commissions and those governing regional commissions, however, the laws governing metropolitan area planning and development commissions shall control and shall govern the metropolitan area planning and development commission. For example, but without intending to limit the generality of the foregoing statement, the provisions of Code Sections 50-8-84 through 50-8-87, regarding membership of a metropolitan area planning and development commission, terms of officers, quorums, and elections of officers, would govern a metropolitan area planning and development commission instead of the provisions covering the same subject matter under this article. (Code 1981, § 50-8-42, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-43. Appropriation or loan of funds, facilities, supplies, and equipment by local government entities.

The governing authorities of the local governmental entities within each regional commission may appropriate or loan their funds, facilities, equipment, and supplies to the regional commission. (Code 1981, § 50-8-43, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-44. Exemption from taxes.

Each regional commission exists for nonprofit and public purposes; and it is found and declared that the carrying out of the purposes of each regional commission is exclusively for public benefit and its property is public property. Thus, no regional commission shall be required to pay any state or local ad valorem, sales, use, or income taxes. (Code 1981, § 50-8-44, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-45. Authorized purchases by Department of Administrative Services; commissioner of administrative services to prescribe regulations and standards.

(a) The following provisions apply to all regional commissions. The Department of Administrative Services is authorized to permit regional commissions, on an optional basis, to purchase their motor vehicles, material, equipment, services, and supplies through the state and to issue purchase orders for regional commissions for motor vehicles, material, equipment, services, and supplies.

(b) The regional commissions of this state are authorized to purchase stock from the state's central supply system operated by the Department of Administrative Services.

(c) The regional commissions of this state are authorized to purchase under state-wide term contracts and price agreements established by the Department of Administrative Services.

(d) The regional commissions of this state are authorized to receive directly from the Department of Administrative Services personal property declared surplus by the state.

(e) The commissioner of administrative services shall prescribe regulations necessary for implementation of this Code section and is authorized to establish minimum standards and uniform standard specifications and procedures for the purchase and distribution and disposition of motor vehicles, material, equipment, services, and supplies for the regional commissions of this state. (Code 1981, § 50-8-45, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-45, which was subsequently repealed but was succeeded by provisions in this Code section,

are included in the annotations for this Code section.

Regional development center may purchase airline tickets under state-wide contracts established by the

Department of Administrative Services Att’y Gen. No. 92-22 (decided under former O.C.G.A. § 50-8-45).
with the respective airlines. 1992 Op.

50-8-46. No limits by article on county or municipal zoning power.

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning. (Code 1981, § 50-8-46, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-47. Transfer of outstanding assets, liabilities, contracts, staff, records, or debts.

The outstanding assets, liabilities, contracts, staff, records, or debts of any regional development center not existing after July 1, 2009, shall thereafter be transferred or disposed of by the commission the boundaries of which contain the boundaries of any former regional development district. (Code 1981, § 50-8-47, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

PART 2

COMMISSION ON REGIONAL PLANNING

50-8-50. Creation; role; application.

There is created the Commission on Regional Planning. The Commission on Regional Planning shall coordinate state contract terms, identify appropriate state and federal funding for commissions in the pursuit of shared service delivery goals, coordinate planning of state and federal resource allocation and state service delivery, and identify issues and opportunities requiring state, regional, or local action. This Code section shall not apply to or affect aging programs and services that are under the authority of the Division of Aging Services of the Department of Human Services for planning and administration purposes pursuant to the federal Older Americans Act of 1965. (Code 1981, § 50-8-50, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

50-8-51. Establishment of board of directors; membership.

(a) The Commission on Regional Planning shall be governed by a board of directors that shall initially consist of the following members:

- (1) The Governor;
- (2) The chairperson of each council governing each commission as defined in Code Section 50-8-31;
- (3) The president or executive director of the Association County Commissioners of Georgia;
- (4) The president or executive director of the Georgia Municipal Association;
- (5) The commissioner of community affairs;
- (6) The commissioner of economic development;
- (7) The commissioner of human services;
- (8) The commissioner of natural resources;
- (9) The commissioner of transportation;
- (10) The director of the Environmental Protection Division;
- (11) The director of the Georgia Environmental Finance Authority;
- (12) A designee of the Lieutenant Governor;
- (13) A designee of the Speaker of the House of Representatives; and
- (14) A designee of the State School Superintendent.

(b) The Governor shall serve as chairperson of the Commission on Regional Planning. The Governor is authorized to appoint other members to the Commission on Regional Planning as appropriate. The commissioner of community affairs shall serve as executive director of the Commission on Regional Planning. The chairperson of the appropriate committees of the Senate and the House of Representatives, as determined by the Lieutenant Governor and the Speaker of the House of Representatives, respectively, may serve as ex-officio nonvoting members of the Commission on Regional Planning. (Code 1981, § 50-8-51, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Georgia Environmental Finance Authority” was substituted for “Georgia Environmental Facilities Authority” in paragraph (a)(11).

50-8-52. Executive directors of commissions acting as advisers.

Each executive director of each commission established pursuant to Part 1 of this article shall act as an adviser to the Commission on Regional Planning. (Code 1981, § 50-8-52, enacted by Ga. L. 2010, p. 468, § 1/HB 867.)

ARTICLE 3

CONFLICTS OF INTEREST IN CONTRACT ADMINISTRATION

50-8-60. Definitions.

As used in this article, the term:

(1) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.

(2) “Commission” means a regional commission established pursuant to Article 2 of this chapter.

(3) “Commissioner” means the commissioner of community affairs.

(4) “Council member” means any member of the council of a regional commission established under Article 2 of this chapter.

(5) “Employee” means any person who, pursuant to a written or oral contract, is employed by a regional commission or by a nonprofit corporation.

(6) “Family” means spouse and dependents.

(7) “Nonprofit corporation” means any nonprofit corporation created or controlled by a regional commission as expressly authorized by law, or as administratively authorized pursuant to subsection (f) of Code Section 50-8-35.

(8) “Person” means any person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity.

(9) “Substantial interest” means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(10) “Transact business” or “transact any business” means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; or to obtain loans or loan packaging services on behalf of oneself or any third party as an agent, dealer, broker, or representative. (Code 1981, § 50-8-60, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 5; Ga. L. 2008, p. 181, § 6/HB 1216.)

50-8-61. Prohibited employment of employee of commission or nonprofit corporation; penalties.

(a) For the purposes of this chapter, when a commission or nonprofit corporation administers a contract in which it procures goods or

services or makes loans or otherwise directs the expenditure of funds, no employee who is compensated for his or her services by either the commission or nonprofit corporation or any member of a board or advisory committee of the commission or nonprofit corporation that plays a role in determining such contracts, loans, or procurement decisions shall also serve, during the period of any such contract, loan, or procurement decision, as a board member, officer, independent contractor, or paid employee of the entity contracting with, borrowing from, or otherwise receiving funds from the commission or nonprofit corporation.

(b) This Code section shall not preclude an employee of a commission from serving, without compensation, as an officer of a nonprofit corporation for the purposes of executing loan transactions; nor shall this Code section preclude a commission and any nonprofit corporation that it creates or controls from entering into a contract with the other for the provision of staff services. In addition, this Code section shall not preclude an employee of a private financial institution from serving on a loan review or other advisory committee of a nonprofit corporation even when such financial institution participates in a loan of the nonprofit corporation. Further, this Code section shall not preclude a board member of a commission from also serving as a member of a board or advisory committee of a nonprofit corporation created pursuant to paragraph (1) of subsection (f) of Code Section 50-8-35.

(c) Any person who knowingly violates this Code section shall be subject to the penalties provided for in Code Section 50-8-66. (Code 1981, § 50-8-61, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 6; Ga. L. 1998, p. 128, § 50; Ga. L. 2009, p. 8, § 50/SB 46.)

OPINIONS OF THE ATTORNEY GENERAL

Membership on board of contracting corporation. — Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation created by the

RDC, pursuant to former O.C.G.A. § 50-8-35(g)(1), during the period that a contract exists between the two entities. 1993 Op. Att'y Gen. No. 93-1.

50-8-62. Employee's business transactions with commission or nonprofit corporation prohibited; penalties.

It shall be unlawful for any employee, any member of an employee's family, or any business in which such employee or member of his family has substantial interest, individually or collectively, to transact any business with either the commission or nonprofit corporation by which such employee is employed or affiliated. Any person who knowingly violates this Code section shall be subject to the penalties provided for

in Code Section 50-8-66. (Code 1981, § 50-8-62, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

50-8-63. Disclosure of employee's business transactions with local government; exempt transactions; disclosure of loan transactions by member of board or advisory committee; penalties.

(a) Except as provided in subsection (b) of this Code section, any employee, any member of such employee's family, or any business in which such employee or any member of his family has a substantial interest, individually or collectively, who transacts business with any local government shall disclose such transactions annually. Such disclosures shall be submitted to the board of directors of the commission and to the commissioner prior to January 31 each year on such forms as are prescribed by the commissioner. At a minimum, the disclosures shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

(b) The requirement to disclose certain transactions as provided in subsection (a) of this Code section shall not apply to any transaction when the amount of a single transaction does not exceed \$100.00 and when the aggregate of all transactions does not exceed \$2,000.00 per calendar year.

(c) Any member of a board or advisory committee of the commission or nonprofit corporation who plays a role in determining loan transactions or any member of such person's family who obtains a loan or loan packaging services from such commission or nonprofit corporation shall disclose such transaction at the time of application for such loan or loan packaging services to the board of directors of the commission and to the commissioner. Such disclosure statements shall be public records.

(d) Any person who fails to file a disclosure statement as required in subsections (a) and (c) of this Code section shall be subject to the penalties provided for in Code Section 50-8-66. (Code 1981, § 50-8-63, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

50-8-64. Competitive bidding requirement.

Each commission shall develop a system for competitive bidding relating to the purchase of supplies, equipment, and services and the letting of other contracts and submit written procedures governing such systems to the board of directors of the commission and to the commissioner. Such procedures must accommodate any applicable fund source requirements relating to procurement and must provide, at a

minimum, that contracts let out for bid shall be awarded to the lowest responsible bidder. (Code 1981, § 50-8-64, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

50-8-65. Annual report to Board of Community Affairs.

Within 30 days after the completion of its fiscal year, each commission shall provide to the Board of Community Affairs a report containing the following information:

(1) The name and address of each contractor, public or private, with which the commission contracted and which received more than a total of \$500.00 from the commission; and

(2) The amount of public funds received by the contractor from the commission. (Code 1981, § 50-8-65, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

50-8-66. Civil fine for violations.

Any employee who violates Code Section 50-8-61, 50-8-62, or 50-8-63 shall be subject to a civil fine not to exceed \$10,000.00. (Code 1981, § 50-8-66, enacted by Ga. L. 1992, p. 1271, § 2.)

50-8-67. Influence of election of council members prohibited; executive directors of regional commissions prohibited from participation in partisan political activities; adoption of disciplinary measures.

A member of a regional commission's council or executive director of a regional commission shall not actively or directly attempt to influence the election of persons as members of the council of such regional commission. An executive director of a regional commission shall not participate in any partisan political activities. The council of a regional commission may adopt, as part of its personnel policies, disciplinary measures to be imposed for noncompliance with this Code section. (Code 1981, § 50-8-67, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 7; Ga. L. 2008, p. 181, § 7/HB 1216.)

ARTICLE 4

METROPOLITAN AREA PLANNING AND DEVELOPMENT COMMISSIONS

50-8-80. Definitions.

As used in this article, the term:

(1) “Area” means a standard metropolitan statistical area located wholly within this state as defined by the United States Executive Office of the President, Standard Metropolitan Statistical Area 1967, Part I Criteria, Office of Management and Budget, subject to any changes made by the Board of Community Affairs pursuant to Code Section 50-8-30. No area, county, or municipality may be designated as an “area” and added to this commission and come under the effective operation of this article without the affirmative vote of such area, county, or municipality or its governing body.

(2) “Area plan” means a written proposal that involves governmental action, expenditure of public funds, use of public property, or the exercise of franchise rights granted by any public body and which affects the citizens of more than one political subdivision of an area and which may have a substantial effect on the development of an area. Area plans may involve, but shall not be limited to, such matters as land use (not including zoning), water and sewerage systems, storm drainage systems, parks and open spaces, airports, highways and transit facilities, hospitals, public buildings, and other community facilities and services.

(3) “Commission” means a metropolitan area planning and development commission created in accordance with Code Section 50-8-82.

(4) “Development guides” means the comprehensive development guides adopted by a commission in accordance with Code Section 50-8-92.

(5) “District” means a district created pursuant to paragraph (5) of subsection (a) of Code Section 50-8-84.

(6) “Governing body” means the board of commissioners of a county or the mayor and city council of a municipality or other legislative body which governs a county or municipality.

(7) “Members at large” means those members of a commission elected pursuant to paragraph (6) of subsection (a) of Code Section 50-8-84.

(8) “Municipality” means an incorporated municipality of this state lying primarily within the area.

(9) “Political subdivision” means a county or municipality of this state lying wholly or partially within the area.

(10) “Public members” means those members of a commission holding office pursuant to paragraphs (1) through (5) of subsection (a) of Code Section 50-8-84.

(11) “Redistricting” means a redistricting of an area after publication of a United States decennial census in accordance with para-

graph (5) of subsection (a) of Code Section 50-8-84. (Code 1981, § 50-8-80, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1988, p. 1834, § 1; Ga. L. 1997, p. 442, § 1.)

Cross references. — Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 25C Am. Jur. Pleading and Practice Forms, Zoning and Planning, § 1 et seq.

50-8-81. Legislative intent.

It is in the public interest to create an agency composed of officials of political subdivisions and private citizens to coordinate planning and development within each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census; to designate the agency as the regional commission under Article 2 of this chapter to make the agency the official metropolitan agency for comprehensive research, study, advice, and review concerning area plans; to improve relationships between political subdivisions and public agencies within areas; and to provide policy direction for the solution of common problems through short and long-range comprehensive planning within areas. (Code 1981, § 50-8-81, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.22; Ga. L. 2008, p. 181, § 18/HB 1216.)

50-8-82. Creation of metropolitan area planning and development commission; first meeting.

There is created a metropolitan area planning and development commission in each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census. The chairman of the county commission of the most populous county in an area so having a population of more than 1,000,000 shall, within ten days after July 1, 1971, or within 30 days after the publication of the first United States decennial census which reports that an area has a population of more than 1,000,000, as the case may be, activate the commission to serve that area by convening a

meeting of the members provided for by paragraphs (1) through (4) of subsection (a) of Code Section 50-8-84. (Code 1981, § 50-8-82, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-83. Powers, duties, and obligations of regional commission.

A commission shall be, for its area, a regional commission as defined in and with all the powers, duties, and obligations of a regional commission set forth in Article 2 of this chapter and any other law of general application pertaining to regional commissions on July 1, 2009; and in addition shall have all of the other powers, duties, and obligations set forth in this article. (Code 1981, § 50-8-83, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.23; Ga. L. 2008, p. 181, § 8/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations

governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1.

50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.

(a) The members of a commission for an area shall consist of:

(1) The chairman of the board of commissioners of each county within the area;

(2) The mayor of the most populous municipality within the area;

(3) From each county within the area, except the most populous county within the area, the mayor of a municipality within such county, to be designated by majority vote of the mayors (except the mayor of the most populous municipality within the area) of all municipalities lying within such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county;

(4) From the most populous county within the area, the mayor of a municipality located within the northern half of such county elected by majority vote of the mayors of all municipalities located within the

northern half of such county and the mayor of a municipality located within the southern half of such county elected by a majority vote of the mayors of all municipalities located within the southern half of such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area;

(5) A member of the legislative body of the most populous municipality lying within the area chosen by majority vote of the members of that legislative body; and

(6) Fifteen at-large members not holding elective or appointed public office and not employed by any of the political subdivisions of the area, who shall be elected as follows:

(A) Within ten days after a commission has been activated pursuant to Code Section 50-8-82 and within 90 days after the publication of a subsequent United States decennial census, the members of the General Assembly whose representative or senatorial districts lie wholly or partially within an area shall meet upon call by the Speaker of the House of Representatives and the President of the Senate and shall divide the area into 15 districts. Each district shall contain approximately the same population; shall consist of combinations of contiguous census tracts from the latest available United States decennial census; but may cross the boundary lines of political subdivisions; and

(B) Within ten days after the area has been so divided into districts, the public members of a commission shall meet upon call of the chairman of the county commission of the most populous county within its area and elect one resident of each district as a member of the commission.

(b) Any other provision of this article to the contrary notwithstanding, the General Assembly shall be authorized by local Act to remove any county within an area from the provisions of this article upon the recommendation of a majority of the full membership of the board of commissioners of any such county.

(c) Within 90 days after any area, county, or municipality is added to or removed from the jurisdiction of an existing commission under the provisions of paragraph (1) of Code Section 50-8-80 or subsection (b) of this Code section, the resulting area shall be redistricted and the 15 members at large shall be elected in accordance with paragraph (6) of subsection (a) of this Code section relative to redistricting after a United States decennial census. (Code 1981, § 50-8-84, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 1; Ga. L. 1988, p. 1834, §§ 2, 3; Ga. L. 1997, p. 442, §§ 2, 3.)

50-8-85. Terms of office; removal from office; filling of vacancies.

(a) The public members of a commission shall have terms of office concurrent with their respective terms of public office. Members at large of a commission shall serve for a term of four years, except that one-half (or if an odd number of members at large are elected to a commission, a majority of such members at large) shall serve an initial term (either upon activation of a commission or after a redistricting of a commission) of two years as designated by the public members at the time of election; provided, however, that the terms of all members at large shall terminate at the end of any calendar year during which redistricting of the area has occurred.

(b) The full terms of the members at large shall commence on January 1 of the year following the year in which they are elected except that the first members at large of a newly created commission shall have added to their term the period of time commencing with their election until the first January thereafter.

(c) Any member at large who moves his residence outside a district shall be removed from office by the commission. A commission may remove from office any member at large who has failed to attend the last three or more consecutive regular meetings of the commission. A member at large may be elected to two or more successive terms on a commission. If a member of the commission dies, resigns, is removed from office, or for any other reason ceases to be a member of the commission, his unexpired term shall be filled by the same persons and in the same manner as such member was originally elected to the commission pursuant to Code Section 50-8-84.

(d)(1) Except as provided in paragraph (2) of this subsection, upon the expiration of the term of office of a mayor of a municipality who has been designated by a majority vote of the mayors of all municipalities lying within a county in an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities lying within such county, and such mayors shall designate a mayor from their number as a successor member of the commission, provided that nothing herein shall prevent an incumbent mayor who has been elected to another term of public office from being redesignated as a member of the commission; provided, further, that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county.

(2) Upon the expiration of the term of office of the mayor of a municipality located within the northern half of the most populous county within an area, the chairman of the board of commissioners

shall call a meeting of the mayors of all the municipalities located within the northern half of such county and such mayors shall designate a mayor from their number as a successor member of the commission. Upon the expiration of the term of office of the mayor of a municipality located within the southern half of the most populous county within an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities located within the southern half of such county and such mayors shall designate a mayor from their number as a successor member of the commission. Nothing in this paragraph shall prevent an incumbent mayor who has been elected to another term of office as mayor from being redesignated as a member of the commission. In the event the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area. (Code 1981, § 50-8-85, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 2; Ga. L. 1997, p. 442, § 4.)

50-8-86. Quorum; votes equally weighted.

A quorum for taking action at a meeting of a commission may be set in such manner as the bylaws of the commission shall provide, but it shall not consist of less than one-half of the total number of authorized members of the commission. The vote of any member of the commission shall be equal to the vote of any other member in considering or acting upon any question, proposal, or other matter before the commission. (Code 1981, § 50-8-86, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-87. Chairman; election; powers and duties; salary and expense allowances; removal.

(a) The chairman of a commission shall be elected by the commission from among its members for a two-year term, but no person shall serve as chairman if, after his election to office, he ceases to be a member of the commission. A chairman may succeed himself.

(b) The chairman of a commission shall preside at all meetings of the commission. The chairman shall appoint all officers and committees of the commission, subject to the approval of the commission, and be responsible for carrying out all policy decisions of the commission. The chairman's salary and expense allowances shall be fixed by the commission.

(c) A chairman may be removed from office by the commission. (Code 1981, § 50-8-87, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-88. Election of officers; compensation of officers and members.

A commission shall elect such officers as it deems necessary for the conduct of its affairs, including a secretary and treasurer, who need not be members of the commission, and shall be compensated as determined by the commission. Each member of a commission, other than the chairman, may be paid a per diem compensation not to exceed \$44.00 for each meeting which he attends and additional compensation for such other services as are specifically authorized by the commission, and may be reimbursed for his actual expenses. No commission member, other than the chairman, shall receive compensation in excess of \$2,400.00 per year. (Code 1981, § 50-8-88, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-89. Executive director; selection and appointment.

A commission shall appoint an executive director to serve at the pleasure of the commission as the principal operating administrator for the commission. An executive director shall be chosen from among the citizens of the nation at large and shall be selected on the basis of his training and experience. (Code 1981, § 50-8-89, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-90. Terms of employment of officers, employees, and agents; power to contract with private individuals; officers and employees to be public employees.

A commission may prescribe the compensation, benefits, and all terms and conditions of employment of its officers, employees, and agents. A commission may contract with private individuals or firms for professional services deemed necessary to carry out its responsibilities under this article. Officers and employees of a commission shall be public employees. Comparability with existing wage classifications, pay plans, and other benefits of political subdivisions in its area shall be considered by a commission when carrying out this Code section. (Code 1981, § 50-8-90, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-91. Establishment of advisory committees; appointment of members; compensation.

A commission may establish and appoint persons to advisory committees to assist the commission in the performance of its duties. Members of advisory committees shall serve without compensation but may be reimbursed for their reasonable expenses as determined by the commission. (Code 1981, § 50-8-91, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-92. Development guides; contents.

A commission shall prepare and adopt and from time to time amend, change, or repeal, after appropriate study and such public hearings as may be deemed necessary, comprehensive development guides for its area. The development guides shall consist of policy statements, goals, standards, programs, and maps prescribing an orderly and economic development, public and private, of the area. The development guides shall be based upon and encompass physical, economic, and health needs of the area and shall take into consideration future development which may have an impact on the area including, but not limited to, such matters as land use not including zoning, water and sewerage systems, storm drainage systems, parks and open spaces, land needs and the location of airports, highways, transit facilities, hospitals, public buildings, and other community facilities and services. (Code 1981, § 50-8-92, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-93. Review of area plans; designation as official planning agency; responsibility to carry out assigned or delegated planning functions for an area.

(a) It is in the public interest and it is provided by this article that:

(1) A commission review each area plan prepared for use in an area by a political subdivision or by a public authority, commission, board, utility, or agency;

(2) Each commission be designated as the official planning agency for all state and federal programs to be carried out in the area; and

(3) A commission carry out such other planning functions for an area as may be assigned or delegated to the commission by other agencies or boards, public or private, and accepted by the commission.

(b) As set forth in Code Section 50-8-83, a commission shall be the planning and development commission for an area in accordance with Article 2 of this chapter.

(c) All powers, duties, obligations, and property vested in or imposed upon any metropolitan planning commission in an area are transferred to, imposed upon, and vested in the commission created by this article as the successor of such commission.

(d) A commission shall be designated for its area as the planning agency under 40 U.S.C.A. Section 461 and 40 U.S.C.A. Section 461(g), as amended, P.L. 89-117 (1965), and P.L. 90-448 (1968); 42 U.S.C.A. Section 3725, P.L. 90-351 (1968); 42 U.S.C.A. Section 246(b), P.L. 89-749, as amended, P.L. 90-174 (1967), and for comprehensive trans-

portation studies required by 23 U.S.C.A. Sections 101, 134, P.L. 87-866 (1962); and 49 U.S.C.A. Section 1601, et seq. P.L. 88-365 (1964), as amended, and supplemented by administrative requirements of the United States Department of Transportation, and any similar law enacted before July 1, 1971. A commission is further granted all of the powers, duties, and authorities necessary to carry out its responsibilities and duties under such laws.

(e) A commission shall have power and authority to undertake such other planning functions within its area as may be assigned or delegated to the commission by other agencies or boards, public or private, and for which the commission accepts responsibility. (Code 1981, § 50-8-93, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1998, p. 128, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “Sections” was substituted for “Section” preceding “101” in subsection (d).

U.S. Code. — 40 U.S.C. § 461, referred to in subsection (d), was repealed in 1981. 42 U.S.C. § 3725, also referred to in sub-

section (d), has been omitted. 49 U.S.C. § 1601 et seq., also referred to in subsection (d), formerly appeared as 49 U.S.C. App. § 1601 et seq., which was subsequently repealed and is now codified as 49 U.S.C. App. § 5301.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations

governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

50-8-94. Submission by municipality and county of area plan; comment and recommendation; public hearing upon request for reconsideration of recommendation.

(a) Each municipality within an area and each county within an area shall submit to the commission for comment and recommendation thereon every area plan prepared by such municipality or county. The commission shall maintain all area plans in its files available for inspection by members of the public. No action shall be taken by any municipality or county to put an area plan into effect until 60 days have elapsed after its submission to the commission. Within ten days after submission, the commission shall notify each municipality or county which may be affected by the area plan submitted of the general nature of the plan, the date of submission, and the identity of the submitting municipality or county. Political subdivisions contiguous to the submitting municipality or county shall be notified in all cases by the commission. Within 30 days after receipt of such notice, a municipality or county may present its views to the commission.

(b) If, from its own investigation, from the views presented by a municipality or county affected by the area plans submitted, or otherwise, the commission finds that there are any inconsistencies between the area plan and the area's development guides, the commission may recommend modification of the area plan in such manner as to be consistent with the area's guides.

(c) A submitting municipality or county may request reconsideration of any recommendation by a commission at a public hearing. Such public hearing shall be held by the commission within 30 days after receipt of such request. Notice stating the time and place of each public hearing shall be mailed by the secretary of the commission, at least five days prior to the hearing, to the submitting municipality or county, all affected municipalities and counties, appropriate state regulatory boards and agencies, and members of the commission.

(d) Within 30 days after a public hearing, the commission shall make its recommendations known to the submitting municipality or county, the affected municipalities and counties, and appropriate state regulatory boards and agencies.

(e) Nothing in this Code section shall limit or compromise the right of a municipality or county to establish and administer its own zoning laws and regulations. (Code 1981, § 50-8-94, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-95. Submission by public entity of area plan; review; public hearing upon request for reconsideration of recommendation.

(a) A commission shall review every area plan prepared for use within the area by a public authority, public commission, public board, public utility, or public agency. Each such area plan shall be submitted to the commission by the public authority, public commission, public board, public utility, or public agency preparing the plan before any action is taken to put the plan into effect.

(b) No action shall be taken to put any area plan into effect until 60 days have elapsed after its submission to the commission or until the commission finds and notifies the submitting public authority, public commission, public board, public utility, or public agency that the area plan is not inconsistent with its development guides, whichever first occurs. If, within 60 days after the date of submission, the commission finds that an area plan is inconsistent with its development guides, the commission may recommend modification of the area plan or such part thereof in such a manner as to be consistent with its development guides.

(c) A submitting public authority, public commission, public board, public utility, or public agency may request reconsideration of any

recommendation of the commission at a public hearing. Such public hearing shall be held by the commission within 30 days of such request. Notice stating the time and place of a public hearing shall be mailed, at least five days prior to the hearing, to the submitting public authority, public commission, public board, public utility, or public agency; all affected municipalities and counties within the area; appropriate state regulatory boards and agencies; and members of the commission.

(d) Within 30 days of such public hearing, the commission shall make its recommendations known to the submitting authority, commission, board, utility, or agency, all affected municipalities and counties in the area, and appropriate state regulatory boards and agencies. (Code 1981, § 50-8-95, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-96. Commission to review all applications of governmental entities for state or federal loan or grant; procedure.

A commission shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the State of Georgia, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or State of Georgia or agency thereof, transmit the same to the commission for its review. The comments of the commission shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the State of Georgia, or any agency thereof. (Code 1981, § 50-8-96, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-97. Commission to engage in continuous program of research, study, and planning of matters affecting its area.

A commission shall engage in a continuous program of research, study, and planning of matters affecting its area including but not limited to:

- (1) Land use;
- (2) Transportation within the area, including highways, railroads, airports, streets, and mass transit;
- (3) The acquisition and financing of facilities for the disposal of solid waste material for the area and the means of financing such facilities;
- (4) The acquisition and financing of storm water drainage facilities for the area and the means of financing such facilities;

- (5) The acquisition and financing of suitable major parks and open spaces within and adjacent to the area;
- (6) The control and prevention of air and water pollution;
- (7) Environmental quality;
- (8) Law enforcement agencies and increased efficiency of the criminal justice systems in the area;
- (9) Planning for the provision of health facilities and services; and
- (10) The feasibility of the consolidation of common services of political subdivisions. (Code 1981, § 50-8-97, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-98. Determination of whether plan is area plan under Code Section 50-8-80; procedure; authorization to adopt by-laws, rules, and regulations.

(a) A commission shall have and exercise all power and authority which may be necessary or convenient to enable it to perform and carry out the duties and responsibilities imposed on it by this article.

(b) A commission shall have the authority to determine whether or not a plan is an area plan as defined by paragraph (2) of Code Section 50-8-80. Any member of the commission, governing body of a political subdivision or public authority, commission, board, utility, or agency whose plans may be area plans may request in writing that the commission determine whether a plan is an area plan as defined in paragraph (2) of Code Section 50-8-80. A commission shall make such determination within 15 days after such request and shall afford the requesting party the right to be heard prior thereto. The determination shall be in writing and shall state the basis therefor.

(c) A commission shall also be authorized to adopt bylaws and rules and regulations concerning all aspects of its functions and operations. Such bylaws, rules, and regulations shall be determinative and control all matters unless expressly contradicted or forbidden by other provisions of law. (Code 1981, § 50-8-98, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-99. Authorization to accept gifts, loans, and grants from governments and agencies.

In carrying out the purposes of this article, a commission shall be authorized to contract with, apply for, and accept gifts, loans, and grants from federal, state, or local governments, public agencies, semipublic agencies, or private agencies, to expend such funds, and to

carry out cooperative undertakings or contracts with any such government or agency. (Code 1981, § 50-8-99, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1983, p. 3, § 39.)

50-8-99.1. Commission authorized to be contracting agent for certain local governments.

(a) For purposes of this Code section, the term “participating affected local government” means the governing body of a political subdivision which is or will be affected by a regional public project and which agrees to authorize the commission to act on its behalf as described in this Code section.

(b) In order to more efficiently coordinate and manage the planning, development, implementation, construction, management, and operation of public projects which are regional, rather than purely local, in nature, the commission is authorized pursuant to this Code section to act as the contracting and coordinating agent for the participating affected local governments.

(c) Upon receiving written approval from each participating affected local government, the commission is authorized to act as the sponsor and coordinator of regional public projects. Upon receipt of such approval, the commission shall be authorized to enter into agreements with third parties as agent on behalf of the participating affected local governments. All agreements with third parties related to the planning, development, implementation, construction, management, or operation of the project shall be between the commission as agent for the participating affected local governments and such third parties. Upon contracting with third parties as the project sponsor, the commission shall then enter into subcontracts with the participating affected local governments in order to allocate appropriately the costs and benefits associated with the project, establish obligations and responsibilities of each of the participating affected local governments in connection therewith, delineate the relationships among the parties, and address any other matters which may be necessary or convenient in order to assure the successful completion and operation of the project.

(d) The commission shall not have the power to tax or to incur long-term indebtedness in connection with its authority under this Code section. The commission may make arrangements for the financing of any project described in this Code section if authorized by the participating affected local governments and if any resulting debt thereby created is authorized pursuant to the laws and Constitution of this state. Any such financing or credit shall be extended directly to the participating affected local governments, which shall assume all responsibility to repay same. No debt as authorized in this subsection

shall be incurred in any manner so as to be a responsibility of an affected government unless that affected government's portion of that debt is first approved by a majority of the voters of such affected government voting in an election called by the governing authority of the affected government in the manner provided for calling and holding other special elections if such debt is required to be so approved pursuant to Article IX, Section V of the Constitution. (Code 1981, § 50-8-99.1, enacted by Ga. L. 1986, p. 1049, § 1; Ga. L. 1987, p. 3, § 50; Ga. L. 1988, p. 13, § 50.)

50-8-100. Annual report to General Assembly and to each political subdivision and supporting agency; contents.

On or before February 1 of each year, a commission shall report to the General Assembly of this state and to each political subdivision and supporting agency within its area. The report shall include:

(1) A statement of the commission's receipts and expenditures by category for the preceding calendar year;

(2) A budget for the calendar year during which the report is filed including an outline of its program for such year;

(3) An explanation of any development guides adopted for the area during the preceding calendar year;

(4) A listing of all applications for federal moneys made by political subdivisions within the area submitted to the commission for review during the preceding calendar year;

(5) A listing of area plans of political subdivisions submitted to the commission during the previous calendar year; and

(6) Recommendations of the commission for legislation affecting the area, including legislation affecting the organization and functions of the commission. (Code 1981, § 50-8-100, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-101. Books of account; annual population estimates; operating funds; annual program and budget.

(a) A commission shall keep books of account which shall be independently audited at least once in each full calendar year during which a commission functions. The auditor's report shall be presented to the governing body of each political subdivision within the area and to the General Assembly.

(b) Each year a commission shall make a separate estimate of the number of people who on the first day of April of such year resided

within each county within the area and within the most populous municipality lying wholly or partially within the area specified on a county basis if the municipality lies in more than one county. Based on such population estimates, the governing body of each county in the area and of the said most populous municipality lying wholly or partially within the area shall, during the calendar year next following the year in which the population estimates were made, provide the commission with operating funds in the amount of \$5,000.00 or in the amount provided for each such political subdivision in the following schedule, whichever amount is greater:

(1) Every county within the area and the most populous municipality within the area shall each provide the commission with operating expenses of \$2,000.00; and

(2) In addition to the amount required under paragraph (1) of this subsection, every county within the area and the most populous municipality within the area shall each provide the commission with an amount based upon the number of residents of that county or municipality, respectively, and determined as follows:

(A) Each county which has no portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in that county by the following per resident amounts based upon the appropriate calendar year specified:

2001	80¢
2002	90¢
2003	\$ 1.00

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(B) Each county which has some portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in the county but outside that most populous municipality by the per resident amount specified for the applicable calendar year under subparagraph (A) of this paragraph and shall also provide an amount determined by multiplying the number of persons residing in the county inside that most populous municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001	32¢
2002	36¢

2003 40¢

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(C) The most populous municipality shall provide an amount determined by multiplying the number of persons residing in the municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001 48¢

2002 54¢

2003 60¢

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(D) For calendar years subsequent to 2003, increases in the amounts specified in subparagraphs (A), (B), and (C) of this paragraph shall be based upon increases in the Average Annual Consumer Price Index for All Urban Consumers for the Atlanta Metropolitan Statistical Area, hereafter referred to as CPI-U. Upon approval by the commission, the amount specified for calendar year 2003 in subparagraph (A) of this paragraph shall increase by 10¢ when the latest available CPI-U exceeds 110 percent of the CPI-U for the base year 2001. The commission may also approve additional 10¢ increases in the amount specified in subparagraph (A) of this paragraph whenever the latest available CPI-U exceeds 110 percent of the CPI-U that was the basis for the most recent increase in that amount. Each time the amount in subparagraph (A) of this paragraph increases by 10¢, then the amount in subparagraph (B) of this paragraph shall increase by 04¢ and the amount in subparagraph (C) of this paragraph shall increase by 06¢.

(c) After the first day of April but before the first day of September of each year, a commission shall make the necessary population estimates and compute the amount due from the governing body of each political subdivision in accordance with the formula set forth in subsection (b) of this Code section and certify such population estimates and other data to each such governing body.

(d) Before the fifteenth day of December of each year, a commission shall, at a meeting called for the purpose, adopt a program and budget for the next calendar year. A copy of this program and budget shall be forwarded to each political subdivision and each agency which is expected to contribute to the support of the commission during the next calendar year. If the aggregate amount to be provided by the participating political subdivisions in accordance with the formula set out in

subsection (b) of this Code section is greater than is necessary for such budget, the amount to be provided by each political subdivision shall be reduced pro rata and each such political subdivision shall be notified accordingly.

(e) Each political subdivision required to contribute to the support of a commission by subsection (b) of this Code section shall, on or before the first day of each quarter of a calendar year, furnish 25 percent of the total amount to be provided by it during such year unless such political subdivision shall not have adopted its own operating budget by January 1 of such year, in which event it shall immediately after the adopting of its budget furnish the amounts then due to the commission under this Code section.

(f) The governing body of any political subdivision shall have authority during any year to provide funds to a commission in excess of the amount computed in accordance with subsection (b) of this Code section. (Code 1981, § 50-8-101, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1986, p. 1049, § 2; Ga. L. 1987, p. 555, § 1; Ga. L. 1989, p. 258, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 2001, p. 870, § 1.)

50-8-102. Submission of negative or unfavorable recommendation based upon stale data.

A commission shall not submit a negative or unfavorable recommendation which is based upon any data which has been accumulated for a period of time in excess of 24 months where more current data is available. (Code 1981, § 50-8-102, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-103. Determination of effective dates of certain Code sections by resolution of commission or by operation of law.

Notwithstanding any other provision of this article, a commission shall determine by resolution the timing and sequence of the assumption of such duties, powers, and obligations it may have under Code Sections 50-8-88, 50-8-89, and Code Sections 50-8-93 through 50-8-96 and such Code sections shall not become effective until the date specified in such resolution. However, all such Code sections shall become effective on January 1 of the year following the year in which a commission is created. (Code 1981, § 50-8-103, enacted by Ga. L. 1982, p. 2107, § 51.)

ARTICLE 5
RURAL ECONOMIC DEVELOPMENT

50-8-120. Short title.

This article shall be known and may be cited as the “Rural Economic Development Law.” (Code 1981, § 50-8-120, enacted by Ga. L. 1987, p. 1142, § 1.)

Administrative rules and regulations. — Broadband rural initiative to develop Georgia’s economy, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-7-1.

50-8-121. Rural economic development areas.

Each regional commission of this state, except the regional commission which is also the metropolitan area planning and development commission provided for in Article 4 of this chapter, shall constitute a rural economic development area for the purposes of this article. (Code 1981, § 50-8-121, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.24; Ga. L. 2008, p. 181, § 18/HB 1216.)

50-8-122. Studies for proposed projects.

(a) The regional commission of each rural economic development area provided for in Code Section 50-8-121 may conduct a study for proposed major economic development projects within its respective rural economic development area. The study shall utilize the most recent economic information available.

(b) The proposed economic development projects must have a major impact on the economy of the area and particularly on the counties within each such area which have a per capita income of less than 70 percent of the United States average or a level of unemployment which is 35 percent or more higher than the state average.

(c) Funds for studies provided for in this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose. The department, in consultation with state agencies, local governments, regional commissions, local development organizations, and others, shall establish guidelines for the distribution of funds to carry out the studies provided for in this Code section and shall establish guidelines for the preparation of economic development project studies. Such guidelines shall be approved by the Board of Community Affairs. (Code 1981, § 50-8-122, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.25; Ga. L. 2008, p. 181, §§ 18, 24/HB 1216.)

50-8-123. Recommendation, approval, funding, and implementation of projects.

(a) Each rural economic development area may submit to the Department of Community Affairs proposed economic development projects by January 1, 1989. All proposed projects shall be endorsed by the appropriate local government and shall be evaluated for funding based upon rating and selection criteria prepared by the department in consultation with state agencies, local governments, regional commissions, local development organizations, and others. Such criteria shall be approved by the Board of Community Affairs.

(b) The department shall be authorized to expend funds available to the department under subsection (c) of this Code section to assist in the implementation of projects approved under the procedures outlined in this Code section. In carrying out the intent of this Code section, the Department of Community Affairs, state agencies, regional commissions, local governments, local development organizations, and other agencies or organizations receiving funding from the department are authorized to incorporate other public or private funds into project budgets needed to assure the feasibility of proposed economic development projects authorized under this article.

(c) The funds necessary to carry out the provisions of this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose. (Code 1981, § 50-8-123, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.26; Ga. L. 2008, p. 181, § 24/HB 1216.)

ARTICLE 6**OFFICE OF RURAL DEVELOPMENT;
STATE ADVISORY COMMITTEE
ON RURAL DEVELOPMENT**

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga. L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been re-

designated as Code Sections 50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been redesignated as Article 7 and the Code sections have been redesignated accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been redesignated accordingly.

PART 1

OFFICE OF RURAL DEVELOPMENT

50-8-140. Legislative intent; creation of office.

(a) It is the finding of the General Assembly that economic conditions in rural Georgia can be significantly improved through the creation of a focused and coordinated effort. It is further found that it is appropriate for the state to assist in enhancing economic opportunities and preserving the quality of life in rural communities.

(b) There is created within the Department of Community Affairs the Office of Rural Development in order to address effectively the needs, problems, and opportunities of Georgia's rural areas. (Code 1981, § 50-8-140, enacted by Ga. L. 1988, p. 291, § 1.)

50-8-141. Duties and responsibilities.

The Office of Rural Development is charged and empowered to carry out the following duties and responsibilities:

(1) To serve as the clearing-house and point of contact in state government for information, data, resources, and assistance regarding rural development. The office shall either provide assistance or refer local governments, individuals, and others seeking help to the appropriate department or agency of the state or federal government or elsewhere where applicable;

(2) To conduct ongoing research and analyses of issues and policies affecting rural Georgia and provide advice and recommendations to the Governor and General Assembly on such issues and policies and to publish in print or electronically periodically information and data on the rural economy, including the preparation of the biennial rural economic development plan required in Part 2 of this article;

(3) To monitor and report on activities at the federal level affecting rural development to ensure a prompt and adequate state response to new or amended federal programs and initiatives;

(4) To serve as the Governor's principal adviser on rural development and to assist in coordinating the activities and services of state agencies in order to provide more effective services to rural Georgia;

(5) To supply coordination among state agencies, the University System of Georgia, and others on research and technical assistance related to rural development;

(6) To provide technical assistance to rural communities to facilitate the planning, design, and implementation of rural development initiatives; and

(7) To encourage the assistance of the private sector in effectuating rural development and revitalization. (Code 1981, § 50-8-141, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

50-8-142. Employees.

The commissioner of community affairs may appoint employees as may be necessary to implement such powers and duties as are described by this article. The employees of the Office of Rural Development shall be in the unclassified service as defined by Code Section 45-20-2. The commissioner of community affairs shall describe the duties and fix the compensation for all such employees. (Code 1981, § 50-8-142, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-103/HB 642.)

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective

date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

PART 2

RURAL DEVELOPMENT COUNCIL

50-8-150. Creation of council; members; terms; officers; regular meetings; expenses; bylaws.

(a) There is created the Georgia Rural Development Council. The council shall advise the Governor on matters related to rural development and the preparation of a biennial rural economic development plan and any other such matters requested by the Governor. The council shall be composed of elected officials of municipalities, elected officials of counties, members of the General Assembly, and other persons knowledgeable about the community and economic development of rural areas appointed by the Governor. In making appointments to the council, the Governor shall ensure that members include representatives from throughout rural Georgia.

(b) Members of the council shall serve terms of office of two years and until their successors are appointed by the Governor and qualified.

(c) The officers of the council shall consist of the Governor, who shall serve as the chairperson, a vice chairperson, and a secretary. Except for the chairperson, the council shall elect officers at its July meeting or, if there is no July meeting, at the next scheduled meeting. The vice

chairperson and secretary shall serve one-year terms until their replacements are selected and qualified.

(d) The council shall meet at least twice a year; however, the Governor may call additional special meetings.

(e) Membership on the council shall not preclude the member from holding other public office. Each member of the council shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a councilmember is in attendance at a meeting of the council, plus reimbursement for actual transportation costs incurred while traveling by public carrier or the mileage allowance authorized for certain state officials and employees for the use of a personal automobile in connection with such attendance. The above shall be paid in lieu of any other per diem, allowance, or remuneration.

(f) The council shall adopt bylaws for the regulation of its affairs and conduct of its business. (Code 1981, § 50-8-150, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 1992, p. 988, § 1; Ga. L. 2005, p. 143, § 2/SB 144.)

ARTICLE 7

GRANTS PROMOTING E-85 GASOLINE

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga.L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been redesignated as Code Sections 50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been redesignated as Article 7 and the Code sections

have been redesignated accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been redesignated accordingly.

Editor's notes. — Ga. L. 1992, p. 2829, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 50-8-170 through 50-8-176, relating to community education and development, and was based on Ga. L. 1988, p. 1829, § 1.

50-8-170. Definitions; facilitating E-85 projects; implementation of grant program.

(a) As used in this Code section, the term:

(1) "Board" means the Board of Community Affairs.

(2) "Department" means the Department of Community Affairs.

(3) "E-85 gasoline" means a blend of ethanol and gasoline that by volume consists of not less than 70 percent nor more than 85 percent ethanol which meets the American Society of Testing and Materials (ASTM) D5798-99 Standard Specification for Fuel Ethanol for Automotive Spark-Ignition Engines.

(4) "E-85 project" means installing, replacing, or converting motor fuel storage and dispensing equipment at sites where motor fuel is stored and dispensed for retail sale such that the installed, replacement, or converted equipment shall be used exclusively for storing and dispensing E-85 gasoline for retail sale for a period of not less than five consecutive years.

(5) "Gasoline" has the meaning provided by Code Section 48-9-2.

(6) "Motor fuel" has the meaning provided by Code Section 48-9-2.

(7) "Motor fuel storage and dispensing equipment" means tanks, pumps, dispensers, pipes, hoses, tubes, lines, fittings, valves, filters, seals, covers, and other associated equipment used in storing and dispensing motor fuel for retail sale.

(8) "Retail sale" means the sale for consumption, and not for resale, at a retail outlet serving the motoring public.

(b) The General Assembly finds and declares that facilitating E-85 projects through a program established by the department would return a substantial benefit to the state by promoting investment of private capital to provide improved air quality in this state through reduction of combustion of gasoline in motor vehicles; aid compliance with federal air quality standards; promote the use of alternative domestic fuels that reduce dependence on foreign petroleum supplies; and enable increased availability of motor fuels crucial to the state's economy, welfare, and public safety, which may be especially critical in times of natural disaster or international crisis.

(c) The department shall establish a grant program to fund the costs of E-85 projects, subject to availability of funds. The department shall enter into an intergovernmental contract with the Georgia Environmental Finance Authority for purposes of developing, implementing, and administering such program and disbursing any grant moneys thereunder, and the authority is authorized to and shall develop, implement, and administer such program and disburse any grant moneys subject to the following minimum criteria:

(1) Each grant applicant shall submit a project plan that shall be subject to approval by the Georgia Environmental Finance Authority;

(2) A grant for any approved project shall not exceed \$20,000.00 or 33 1/3 percent of the planned cost of the project, whichever is less, and the applicant shall be required to pay the remainder of the project cost. This paragraph shall not prohibit the applicant from using grants or loans from federal government or private sources to pay for such remainder of the project cost;

(3) Construction for any approved project shall begin not later than six months after the date of the grant;

(4) Any approved project shall be completed not later than one year after the date of the grant;

(5) A project shall be used for the purposes and period required for such project as specified in paragraph (4) of subsection (a) of this Code section; and

(6) Grant money for a project shall be refunded to the state with interest at the legal rate not later than two years after any failure to meet the requirements of paragraph (3), (4), or (5) of this subsection.

(d) The Georgia Environmental Finance Authority shall adopt such rules and regulations as are reasonable and necessary to implement and administer the grant program established under this Code section.

(e) No grants shall be made under this Code section on or after July 1, 2009. (Code 1981, § 50-8-170, enacted by Ga. L. 2007, p. 644, § 1/SB 157; Ga. L. 2010, p. 949, § 1/HB 244.)

ARTICLE 8

REGIONAL ECONOMIC ASSISTANCE PROJECTS

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga. L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been redesignated as Code Sections 50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been redesignated as Article 7 and the Code sections have been redesignated accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been redesignated accordingly.

Editor's notes. — The former article consisted of Code Sections 50-8-190 through 50-8-194 and was based on Code 1981, §§ 50-8-190 through 50-8-194, enacted by Ga. L. 1988, p. 1913, § 1; Ga. L. 1989, p. 1317, §§ 6.27, 6.28, and was repealed by Ga. L. 1988, p. 1913, § 1.

Ga. L. 1999, p. 1206, § 1, not codified by

the General Assembly, provides: "The General Assembly finds that large scale projects with multiple uses offer a unique opportunity for local government, state government, and the private sector to cooperate in producing growth and development in rural areas resulting in additional local tax revenue and providing employment opportunities of high caliber in tourism and hospitality, industries which are environmentally friendly and promote increased recreational opportunities and an enhanced quality of life for all Georgians. The General Assembly further finds that successful cooperation can provide benefits to the state through the overall economic impact of the project, improved local land use management, and strategic infrastructure investment and benefits to the private sector developer through the predictability of certain types of licenses and services. The General Assembly further finds that the location of these projects in rural areas could substantially advance efforts to improve the economic well-being of rural Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 83 Am Jur. 2d, Zoning and Planning, § 104 et seq.

50-8-190. Definitions.

As used in this article, the term:

(1) “Adjacent facility” means any facility adjoining a project that meets the requirements of a subparagraph of paragraph (3) of subsection (c) of Code Section 50-8-191 which is not met by the project and that is the subject of a reciprocal use agreement executed by the project developer and the owner or operator of the adjacent facility.

(2) “Certification of compliance” means a determination by the commissioner that the project meets all criteria to be designated a REAP.

(3) “Commissioner” means the commissioner of community affairs.

(4) “Full-service restaurant” means a restaurant which regularly serves two or more meals on each day it is open for business and is open for business at least six days weekly.

(5) “Notice of noncompliance” means a notice from the commissioner that the Department of Community Affairs has determined that the project has failed to comply with all requirements for designation as a REAP.

(6) “Regional Economic Assistance Project” or “REAP” means a project, including any adjacent facility covered by a reciprocal use agreement, which meets the criteria specified in Code Section 50-8-191 and which receives a certification of compliance from the commissioner. (Code 1981, § 50-8-190, enacted by Ga. L. 1999, p. 1206, § 2.)

Administrative rules and regulations. — Regional economic assistance projects, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-20-1.

50-8-191. Application for REAP designation; minimum criteria; reciprocal use agreements with adjacent facilities.

(a) The initial application for designation as a REAP shall be made to the municipal corporation or county in which the project will be located. Developers of projects to be located completely within the corporate limits shall apply to the municipal corporation; developers of projects to be located completely in the unincorporated part of a county shall apply to the county; developers of projects to be located partially within the corporate limits of a municipality and partially within the unincorporated

rated part of a county and developers of projects to be located in more than one municipal corporation or more than one county shall apply to the county or municipality in which will be located all or a substantial portion of the restaurant and clubhouse improvements.

(b) The application for designation as a REAP shall include:

(1) A detailed description of the project, including all adjacent facilities which are subject to a reciprocal use agreement, and showing the scope and design;

(2) A map showing the boundaries of the project and showing the current zoning for each area to be included within the project. If the project includes a reciprocal use agreement with the owner or operator of an adjacent facility, the map shall show and include the adjacent facility; and

(3) A comprehensive economic and development impact study showing the benefits to be derived from the project.

(c) To comply with the minimum criteria for application for designation as a REAP, a project, in combination with any adjacent facility included by a reciprocal use agreement, shall:

(1) Be not less than 250 acres in size or be located on or adjacent to a lake of not less than 2,500 acres;

(2) Where required, have zoning which is appropriate to the planned uses and plans which are consistent with other land use regulations; and

(3) Provide for at least three of the following criteria:

(A) Include one or more regulation 18 hole golf courses, with a clubhouse providing food service, or have a commercial boat marina of not less than 300 boat slips, with a facility providing food service;

(B) Include a full-service restaurant with minimum seating for 75 or more persons;

(C) Include at least 100 residential units;

(D) Include at least 200 rooms for overnight stays;

(E) Include conference facilities with capacity for 150 participants; or

(F) Be located in a county in which a state operated facility or authority provides services or products, or both, to the general public.

(d) The developer of a project which meets the requirements of paragraphs (1) and (2) of subsection (c) of this Code section and the

requirements of two of the criteria set out in paragraph (3) of subsection (c) of this Code section may apply for designation as a REAP.

(e) If the project appears to meet the criteria set out in this Code section, the governing authority of the local government may by resolution approve the project and submission of the project application to the Department of Community Affairs for review and action. Upon a determination by the commissioner that the project will confer substantial benefits upon the local jurisdiction, application of not more than one of the criteria set forth in this Code section or the rules and regulations promulgated pursuant to this article may be waived. (Code 1981, § 50-8-191, enacted by Ga. L. 1999, p. 1206, § 2; Ga. L. 2002, p. 520, § 1.)

50-8-192. Certification of compliance; notices of noncompliance.

(a) Upon submission of a project after approval by the local government or governments, the Department of Community Affairs shall determine whether the project meets the criteria set out in Code Section 50-8-191 for designation as a REAP and complies with any rules and regulations promulgated by the Department of Community Affairs to implement this article. If the project meets such criteria and complies with such rules, the commissioner shall issue a certification of compliance. If the project does not meet such criteria and comply with such rules, the commissioner shall issue a notice of noncompliance.

(b) Each certification of compliance shall include a summary of the project's expected economic benefits for the short term and the long term and any recommendations for adjustment of the project based upon local land use and comprehensive plans and infrastructure needs.

(c) Each notice of noncompliance shall include a list of deficiencies of the project. A developer of a project which has received a notice of noncompliance may resubmit an initial application for designation as a REAP to the local government or governments involved; such a resubmitted application shall include a copy of the notice of noncompliance and a detailed explanation of the project modifications designed to remedy the deficiencies. (Code 1981, § 50-8-192, enacted by Ga. L. 1999, p. 1206, § 2.)

50-8-193. State agencies encouraged to give certified projects priority in licensing and processing grants and loans.

The Department of Community Affairs shall certify that a project has received a certificate of compliance as a REAP to the Department of Natural Resources; the Department of Economic Development; the

Department of Transportation; the Department of Revenue; the Department of Labor; the Georgia Environmental Finance Authority; and any other state department, agency, or instrumentality which requests such certification. All state agencies, departments, and instrumentalities are encouraged to give priority in their permitting and licensing and in the processing of grants and loans to local governments for projects which have received a certification. (Code 1981, § 50-8-193, enacted by Ga. L. 1999, p. 1206, § 2; Ga. L. 2004, p. 690, § 40; Ga. L. 2008, p. 363, § 3/HB 1280; Ga. L. 2010, p. 949, § 1/HB 244.)

50-8-194. Annual report by project developer.

For each project that has received a certification of compliance, the project developer shall submit an annual report to the Department of Community Affairs until the date planned for completion of all phases of the project. The developer's report shall include a statement regarding the status of private investment, job creation, and construction schedules. The report shall also include information regarding the impact of the project on the local tax base, land use control, and the local government infrastructure for water, sewer, and transportation. (Code 1981, § 50-8-194, enacted by Ga. L. 1999, p. 1206, § 2.)

50-8-195. Promulgation of rules and regulations.

The Department of Community Affairs is authorized to promulgate rules and regulations to implement this article. (Code 1981, § 50-8-195, enacted by Ga. L. 1999, p. 1206, § 2.)

ARTICLE 9

RURAL FACILITIES ECONOMIC DEVELOPMENT

50-8-210. Short title.

This article shall be known and may be cited as the "Rural Facilities Economic Development Act." (Code 1981, § 50-8-210, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-211. Legislative findings.

The General Assembly finds that in recent years rural Georgia has undergone a severe economic recession. It is evident that an investment in the economic situation of the state's most distressed counties would result not only in an improvement in the quality of life for the citizens of those counties but also in the economic health of the entire state by increasing the state's total economic growth. There is a serious need in

those less developed counties for jobs and for many fundamental community facilities which are essential to an improved quality of life and an equal opportunity for economic development. The facilities needs of each less developed county are individually specific and the citizens of each such community will as a part of the growth strategies program determine which needs are of most importance and worth to their community. Those economically distressed counties in many cases have exhausted all available funding resources in an attempt to help themselves but still do not have the economic ability to supply their facilities needs without substantial assistance from the state. It is therefore essential that the General Assembly provide funding assistance to make possible the construction of such facilities as each county may determine necessary, based on need, priorities, merit, and planning, to improve the quality of life and economic development in the most economically distressed counties of this state. (Code 1981, § 50-8-211, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-212. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Community Affairs.
- (2) "Commissioner" means the commissioner of community affairs.
- (3) "Comprehensive plan" means any plan by a county or municipality relating to the facilities needs of such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans established by the department in accordance with Article 1 of this chapter.
- (4) "Conflict" means any conflict, dispute, or inconsistency relating to a local plan or to the priority of the facilities needs in a local plan arising within a facilities development committee created pursuant to this article.
- (5) "Department" means the Department of Community Affairs.
- (6) "Facility" or "facilities" means a capital improvement designed to assist the less developed county in economic development including, but not limited to, the areas of transportation networks; water supply and treatment, sewer, waste-water treatment, and solid waste disposal facilities; public safety, fire protection, and emergency medical services; recreational, general government, and educational facilities; and libraries and other cultural structures.
- (7) "Less developed county" means any county designated pursuant to Code Section 50-8-213. Any area so designated shall, for the

purposes of this article, be considered a less developed area for a period of not less than ten years.

(8) "Local plan" means the plan of any less developed county and the municipalities lying therein which plan consolidates and prioritizes the facilities needs contained in the various comprehensive plans of the less developed county and the municipalities lying therein.

(9) "Regional commission" means a regional commission created pursuant to the provisions of Article 2 of this chapter. (Code 1981, § 50-8-212, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

50-8-213. Designation and ranking of less developed counties.

(a) Not later than July 1, 1992, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner shall rank and designate as less developed counties the lower 25 percent of all counties in this state using a combination of the following factors:

- (1) Highest unemployment rate for the most recent 36 month period;
- (2) Lowest per capita income for the most recent 36 month period;
- (3) Highest percentage of residents whose income is below the poverty level according to the most recent data available; and
- (4) Average weekly manufacturing wage according to the most recent data available.

(b) The commissioner shall be authorized to include in the designation provided for in subsection (a) of this Code section any county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a less developed area. (Code 1981, § 50-8-213, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-214. Membership of facilities development committee.

(a) There is created in each less developed county a facilities development committee to be composed as follows:

- (1) Three members appointed by the governing authority of the less developed county, one who is a member of such authority, and one who is from the private sector, and one who may but need not serve

in the county government who shall serve as chairman of the committee; and

(2) Two members appointed by the governing authority of each municipality lying within the less developed county, one who is a member of such authority and one who is from the private sector.

(b) All members shall reside within the less developed county or the municipality from which they are appointed and shall serve without compensation.

(c) Members shall serve terms of four years and may be reappointed. (Code 1981, § 50-8-214, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-215. Policies and procedures for facilities development committee.

(a) Each facilities development committee shall be known by the name of the county followed by the words "Facilities Development Committee."

(b) The commissioner shall establish policies and procedures by rule or regulation for the facilities development committees necessary for said committees to perform the duties provided by this article.

(c) Each regional commission within which a less developed county lies is authorized and directed to assist the facilities development committee in the development of a local plan. (Code 1981, § 50-8-215, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

50-8-216. Preparation of comprehensive local plan for less developed county.

(a) Each facilities development committee, in conjunction with the regional commission in which the less developed county is located, shall review the comprehensive plans for facilities needs prepared by the less developed county and each municipality lying therein pursuant to the provisions of Article 2 of this chapter and shall consolidate such comprehensive plans and prepare a local plan which prioritizes the combined facilities needs contained in each comprehensive plan. Such local plan may be amended from time to time pursuant to procedures established pursuant to subsection (b) of Code Section 50-8-215 to change the priorities or add new facilities. No facility shall be added to a local plan unless it has previously been made a part of the comprehensive plan of either the less developed county or a municipality lying therein pursuant to Article 2 of this chapter.

(b) Not later than the first day of July of the year following its creation, each facilities development committee shall provide the com-

missioner with the local plan of facility development developed pursuant to subsection (a) of this Code section. (Code 1981, § 50-8-216, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

50-8-217. Conflicts arising in preparation and submission of local plan.

In the event any conflict arises in or with the facilities development committee in the preparation and submission of a local plan, such conflict shall be resolved by the department in the manner provided by subsection (d) of Code Section 50-8-7.1. (Code 1981, § 50-8-217, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-218. Submission of local plan required; applications for grants.

No less developed county shall be eligible to receive a grant pursuant to this article until a local plan has been submitted. The commissioner shall provide by rule or regulation for the submission of local plans and the administration of grant applications and shall establish criteria for the types of facilities which would qualify for a grant under this article; provided, however, that such criteria shall realistically reflect the diverse facility needs of the various less developed counties for economic development. The commissioner shall submit such criteria to the General Assembly at the next regular session following July 1, 1991, and such criteria shall become effective only when ratified by joint resolution of the General Assembly. The power of the commissioner to promulgate such criteria shall be deemed to be dependent upon such ratification. (Code 1981, § 50-8-218, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-219. Review of local plan by commissioner.

(a) The commissioner shall review each plan to determine compliance with the criteria established pursuant to Code Section 50-8-218 and within 30 days from the date of submission of the plan shall approve or disapprove such plan. If the commissioner disapproves any plan, he shall provide a detailed reason for such recommendation and may suggest such changes to the plan as he deems appropriate.

(b) Any county may apply to the board for review of a disapproved plan. The board shall review each such plan and, within 30 days from the date of receipt of the commissioner's recommendation, shall either approve or disapprove the plan. If the plan is disapproved, the board shall provide the facilities development committee with a detailed reason for such disapproval and may suggest such changes to the plan

as would result in the approval of the plan. (Code 1981, § 50-8-219, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-220. Matching grants for implementation of local plan.

(a) Each less developed county shall be entitled to receive from the state matching grants in an equal amount pursuant to this article for the implementation of all or part of its local plan of facilities development as approved by the board in the order of priority as established in its local plan, subject to the provisions of Code Section 50-8-222 and subject to the availability of funds appropriated by the General Assembly for such grants.

(b) The governing authority of the less developed county shall be responsible for receiving such funds, which it shall maintain separate from all other county funds, and shall be responsible for implementing the plan of development.

(c) The governing authority of the less developed county shall be authorized to perform all functions necessary to implement the local plan of facilities development including, without limitation, purchasing or leasing property and entering into such contracts as may be necessary for such purpose.

(d) The funds granted pursuant to this Code section may be used as received or in conjunction with funds from any other available source, and they may be used in conjunction with any leasing authority granted to the less developed county or in conjunction with any revolving loan fund, or both, and may be used as matching funds for any federal or state grant. (Code 1981, § 50-8-220, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-221. Oversight of local plan by facilities development committee.

Each facilities development committee shall have oversight authority of each local plan of facilities development, and the governing authority of the less developed county shall submit annually to the department a detailed written progress report and full accounting of receipts and expenditures. (Code 1981, § 50-8-221, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-222. Distribution of appropriated funds; ratio of matching funds; submission of consolidated report and accounting.

(a) The department shall direct the distribution of any appropriated funds to the governing authority of the less developed county, as

provided in Code Section 50-8-220; provided, however, that the less developed county and the municipalities within the less developed counties shall annually match any appropriated funds in a ratio of \$1.00 local funds for every \$9.00 appropriated funds.

(b) The commissioner shall consolidate the annual progress reports and accounting of funds submitted by the facilities development committees and submit a consolidated report and accounting to the General Assembly not later than December 31 of each year. (Code 1981, § 50-8-222, enacted by Ga. L. 1991, p. 1712, § 1.)

ARTICLE 10

MARTIN LUTHER KING, JR., ADVISORY COUNCIL

Effective date. — This article became effective May 9, 2011.

50-8-240. Creation; members; vacancies; quorum.

(a) There is created within the Department of Community Affairs the Martin Luther King, Jr., Advisory Council.

(b) The council shall consist of nine members as follows:

(1) The commissioner of community affairs or his or her designee;

(2) Six members to be appointed by the Governor, two of whom shall be between the ages of 18 and 22 years;

(3) One member to be appointed by the President of the Senate; and

(4) One member to be appointed by the Speaker of the House of Representatives.

(c) Members shall serve four-year terms. No member of the council shall serve more than two consecutive terms.

(d) Vacancies in the membership of the council shall be filled for the balance of the unexpired term by the appointing authority.

(e) The council shall select annually a chairperson from among its membership.

(f) Members of the council shall be subject to removal from office by the appointing authority when the actions or condition of a member shall be considered as good cause for removal.

(g) A majority of the council shall constitute a quorum for the transaction of business.

(h) Members of the council shall serve without compensation but, to the extent moneys are received from voluntary contributions through a

not for profit corporation, shall be eligible to receive reimbursement for mileage and other expenses actually incurred in performance of their duties in accordance with the rates and standards for reimbursement of state employees. (Code 1981, § 50-8-240, enacted by Ga. L. 2011, p. 255, § 1/SB 141; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

50-8-241. Duties.

The Martin Luther King, Jr., Advisory Council shall have the following duties:

(1) To promote racial harmony, understanding, respect, and good will among all citizens;

(2) To promote principles of nonviolence, peace, and social justice;

(3) To promote among the people of Georgia, by appropriate activities, both awareness and appreciation of the Civil Rights movement and advocacy of the principles and legacy of Martin Luther King, Jr.;

(4) To develop, coordinate, and advise the state of appropriate ceremonies and activities relating to the observance of the birthday of Martin Luther King, Jr., including, without limitation, providing advice and assistance to local governments and private organizations;

(5) To enable the people of Georgia to reflect on the life and teachings of Martin Luther King, Jr., through educational endeavors, cultural performances, exhibitions, and events that are multiethnic and family oriented; and

(6) To prepare an annual report for the Governor and the General Assembly detailing the actions taken to fulfill these responsibilities and duties. (Code 1981, § 50-8-241, enacted by Ga. L. 2011, p. 255, § 1/SB 141; Ga. L. 2012, p. 775, § 50/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in the introductory paragraph.

50-8-242. Authority to establish not for profit corporation and appoint members.

The Department of Community Affairs is authorized to establish a not for profit corporation and to appoint the members of the board of

trustees of such corporation for the purpose of sustaining and furthering the purpose of the council. (Code 1981, § 50-8-242, enacted by Ga. L. 2011, p. 255, § 1/SB 141.)

CHAPTER 9

GEORGIA BUILDING AUTHORITY

Article 1		Sec.	
General Provisions			
Sec.			
50-9-1.	Short title.	50-9-36.	tions; additional bonds authorized to provide for deficit; surplus to be paid into fund.
50-9-2.	Definitions.		Interim certificates and temporary bonds authorized.
50-9-3.	Creation of authority; general powers; membership; officers; quorum; vacancy; expenses; rules.	50-9-37.	Replacement of mutilated or lost bonds.
50-9-4.	Authority assigned for administrative purposes.	50-9-38.	No other conditions precedent; issuance for combination of projects authorized; passage and effective date of resolution.
50-9-5.	General powers.	50-9-39.	Not debt or pledge of credit of state; bonds to contain recital of provisions.
50-9-6.	Authorization for projects and facilities on Confederate Soldiers' Home property.	50-9-40.	Trust indentures as security; provisions.
50-9-7.	Authorization for state archives building.	50-9-41.	Authority to provide for payment of proceeds to person or agency as trustee.
50-9-8.	Charges and leases for use of projects.	50-9-42.	Sinking fund; pledge and allocation of funds to pay principal and interest.
50-9-9.	Disruptions of state employees; protection of property.	50-9-43.	Rights and remedies of bondholders.
50-9-10.	Rules and regulations for operation of projects.	50-9-44.	Refunding bonds.
50-9-11.	Acceptance of grants and contributions.	50-9-45.	Authorized investment and deposit securities.
50-9-12.	Moneys received deemed trust funds.	50-9-46.	Validation; parties defendant to action; judgment final and conclusive.
50-9-13.	Exemption from taxation.	50-9-47.	Interests and rights of bondholders not to be adversely affected; provisions constitute contract.
50-9-14.	Jurisdiction and venue of actions.		
50-9-15.	Provisions supplemental.		
50-9-16.	Liberal construction of provisions.		
50-9-17.	Transferred authorities.		
Article 2		Article 3	
Revenue Bonds		Executive Center Fine Arts Committee	
50-9-30.	Issuance authorized; amount; interest; redemption.	50-9-60.	Creation of committee; membership.
50-9-31.	Form, denomination, place of payment, registration.	50-9-61.	Terms of members; appointment; vacancies; honorary chairman; advisory groups; no compensation for services or expenses; reimbursement from private funds.
50-9-32.	Valid signatures, seal, attestation.		
50-9-33.	Negotiable instruments; exempt from taxation.	50-9-62.	Powers and duties.
50-9-34.	Manner and price of sale.	50-9-63.	Employment and compensation of personnel.
50-9-35.	Proceeds to be used for project costs; disbursed under restric-		

- Sec.
50-9-64. State agencies authorized to cooperate with committee.
50-9-65. Moneys received to be in special fund; property to become state property and may be sold or exchanged.
50-9-66. Accountability for funds; committee as instrumentality of state; not amenable to action; enjoys sovereign immunity.

Article 4

Hazardous Materials Removal Agency

50-9-80 through 50-9-84 [Repealed].

Article 5

Purchase of Materials and Fixtures Based on Life Cycle Costs

- Sec.
50-9-100. "Life cycle costs" defined.
50-9-101. Purchase of materials and fixtures to be based on life cycle costs.

Article 6

Inventory of State Buildings

50-9-110 and 50-9-111 [Repealed].

Cross references. — Georgia Building Authority (Penal), T. 42, C. 3.

Editor's notes. — By resolution (Ga. L. 1988, p. 2071), the General Assembly di-

rected the Georgia Building Authority to select a site on the grounds of the James H. "Sloppy" Floyd Veterans Memorial Building to erect the Vietnam Memorial.

ARTICLE 1

GENERAL PROVISIONS

50-9-1. Short title.

This article and Article 2 of this chapter may be cited as the "Georgia Building Authority Act." (Ga. L. 1951, p. 699, § 1; Ga. L. 1967, p. 856, § 1.)

50-9-2. Definitions.

As used in this article and Article 2 of this chapter, the term:

(1) "Authority" means the Georgia Building Authority, the same being formerly known as the "State Office Building Authority." The change in the name of the authority shall not affect the rights, powers, privileges, or liabilities of the authority or of any person under the provisions of this article and Article 2 of this chapter.

(2) "Bonds" or "revenue bonds" means any bonds issued by the authority under this article and Article 2 of this chapter including refunding bonds.

(3) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights and easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest

prior to and during construction and for one year after completion of construction; cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under Article 2 of this chapter for such project.

(4) "Project" means and includes one or a combination of two or more of the following: buildings and facilities intended for use as offices and related uses and all structures, including electric, gas, steam, and water utilities and facilities of every kind and character deemed by the authority necessary or convenient for the efficient operation of any department, board, commission, or agency of the state. Without limiting the foregoing and without further determination of necessity or convenience, the word "project" also means and includes public parks and public parking facilities adjacent to the state capitol other than the facilities within or connected to state owned or state leased buildings; a parking facility on the "Old Incinerator" site acquired in 1983 by the State of Georgia from the City of Atlanta in Fulton County, Georgia; an executive mansion and buildings, structures, and facilities of every kind and character for use in conjunction with the mansion regardless of whether the buildings, structures, and facilities are physically connected with such mansion; and a Department of Transportation laboratory and buildings, structures, and facilities of every kind and character for use in conjunction with the laboratory, regardless of whether the buildings, structures, and facilities are physically connected with the laboratory, provided that the buildings, structures, and facilities are built and constructed on property owned by the Department of Transportation at Forest Park, Georgia.

(5) "Self-liquidating project" means any project or combination of projects if, in the judgment of the authority, the revenues to be derived by the authority from rentals of the project or projects will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of the project, projects, or combination projects. (Ga. L. 1951, p. 699, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 355, § 1; Ga. L. 1961, p. 587, §§ 1, 2; Ga. L. 1962, p. 660, § 1; Ga. L. 1964, p. 108, § 1; Ga. L. 1966, p. 205, § 1; Ga. L. 1967, p. 856, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 224, § 1; Ga. L. 2002, p. 1427, § 1; Ga. L. 2005, p. 100, § 2/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in paragraph (4), in the first sentence a comma was inserted following “steam”, and in the second sentence hyphens were deleted between “state” and “owned” and between “state” and “leased” and a comma was inserted preceding “provided that”.

Law reviews. — For article, “Public Authorities: Legislative Panacea?,” see 5 J. of Pub. L. 387 (1956).

For note, “The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither,” see 8 Ga. L. Rev. 680 (1974).

JUDICIAL DECISIONS

Purpose of authority. — Building authority was created for the purpose of erecting buildings and other facilities to house agents and officials of the state government. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

Georgia Building Authority is arm or alter ego of state. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

50-9-3. Creation of authority; general powers; membership; officers; quorum; vacancy; expenses; rules.

There is created a body corporate and politic to be known as the Georgia Building Authority which shall be deemed to be an instrumentality of the state and a public corporation, and by that name, style, and title the body may contract and be contracted with, implead and be impleaded, and bring and defend actions in all courts. The authority shall consist of the same persons who comprise the State Properties Commission. Each member shall serve under the same terms and conditions as provided for in Code Section 50-16-32. The state property officer appointed by the Governor pursuant to Code Section 50-16-35 shall serve as executive director of the authority. The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this article and Article 2 of this chapter nor impair the obligations of any contracts existing under this article and Article 2 of this chapter. (Ga. L. 1951, p. 699, § 2; Ga. L. 1967, p. 856, § 2; Ga. L. 1988, p. 426, § 1; Ga. L. 2005, p. 100, § 3/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, a duplicate “the” was deleted preceding “same persons” in the second sentence.

50-9-4. Authority assigned for administrative purposes.

The authority is assigned to the State Properties Commission for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 416; Ga. L. 2005, p. 100, § 4/SB 158.)

50-9-5. General powers.

The authority shall have the powers:

- (1) To have a seal and alter the same at pleasure;
- (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation, in accordance with any and all laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or disposal of the same in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this chapter except from the funds provided under the authority of this chapter; and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the action or proceeding as may be just to the authority and to the owners of the property to be condemned. No property shall be acquired under this chapter upon which any lien or other encumbrance exists unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of the lien or encumbrance; and if the authority shall deem it expedient to construct any project on lands which are a part of the real estate holdings of the state, the Governor is authorized to execute for and on behalf of the state a lease of the lands to the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years. If the authority shall deem it expedient to construct any project on any other lands the title to which shall then be in the state, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority;
- (4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix their compensation and to serve as financial adviser and agent to other state authorities;
- (5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be erected or acquired; and any and all political subdivisions, departments, institutions, or agencies of the

state are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable. Without limiting the generality of the above, authority is specifically granted to any department, board, commission, agency, or appellate court of the state to enter into contracts and lease agreements for the use or concerning the use of any structure, building, or facilities or a combination of any two or more structures, buildings, or facilities of the authority for a term not exceeding 50 years; and any department, board, commission, or agency of the state may obligate itself to pay an agreed sum for the use of the property so leased and also to obligate itself as part of the lease contract to pay the cost of maintaining, repairing, and operating the property leased from the authority;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in Code Section 50-9-2, to be located on property owned by or leased by the authority, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority or from such proceeds and any grant from the United States or any agency or instrumentality thereof;

(7) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or the agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions, which is not in conflict with the Constitution and laws of this state; and

(10) To do all things necessary or convenient to carry out the powers expressly given in this chapter. (Ga. L. 1951, p. 699, § 4; Ga. L. 1967, p. 856, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 224, § 2; Ga. L. 1985, p. 745, § 1; Ga. L. 1991, p. 970, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2002, p. 1427, § 2; Ga. L. 2005, p. 100, § 5/SB 158.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 37 et seq.

C.J.S. — 81A C.J.S., States, §§ 259, 437, 443 et seq.

50-9-6. Authorization for projects and facilities on Confederate Soldiers' Home property.

In addition to the powers and authority granted under this article and Article 2 of this chapter, the authority shall be authorized and empowered to construct, operate, and maintain self-liquidating projects and facilities for the Department of Public Safety on the property of the state known as the Confederate Soldiers' Home property located in Fulton County, under the powers, methods, and procedures provided in such articles. (Ga. L. 1955, p. 585, § 1.)

50-9-7. Authorization for state archives building.

In addition to the powers and authority granted under this article and Article 2 of this chapter, the authority shall be authorized and empowered to construct, operate, and maintain under this article and Article 2 of this chapter as a project thereunder a state archives building on property owned or acquired by the state. (Ga. L. 1960, p. 192, § 2.)

50-9-8. Charges and leases for use of projects.

(a) The authority is authorized to fix rentals and other charges which any department, board, commission, or agency of the state, governmental subdivisions thereof, or other persons, firms, or corporations shall pay to the authority for the use of each project, or part thereof or combination of projects, and to charge and collect the same and to lease and make contracts with any department, board, commission, or agency of the state with respect to the use by an institution or unit under its control of any project or part thereof. Such rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or projects for which a single issue of revenue bonds is used, as to provide a fund sufficient with other revenues of the project or projects, if any, to pay:

(1) The cost of maintaining, repairing, and operating the project or projects, including reserves for extraordinary trust indentures, unless such cost is otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project or projects for water, light, sewer, and other services furnished by other facilities like such institution; and

(2) The principal of the revenue bonds and the interest thereon as the same becomes due.

(b) The rentals contracted to be paid by the state or any department, agency, or institution of the state to the authority under leases entered

upon pursuant to this article and Article 2 of this chapter shall constitute obligations of the state for the payment of which the good faith of the state is pledged. The rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of this state. It shall be the duty of the state or any department, agency, or institution of the state to see to the punctual payment of all such rentals.

(c) In the event of any failure or refusal on the part of lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this article and Article 2 of this chapter, the authority may enforce performance by any legal or equitable process against lessees, and consent is given for the institution of any such action.

(d) The authority shall be permitted to assign any rental due it by lessees to a trustee or paying agent as may be required by the terms of any trust indenture entered into by the authority. (Ga. L. 1951, p. 699, § 27; Ga. L. 1961, p. 587, § 4; Ga. L. 1964, p. 108, § 3; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 264, 265.

50-9-9. Disruptions of state employees; protection of property.

(a) In that it has been previously declared by state law that the use of the capitol building and grounds shall be limited to departments of state government and to state and national political organizations and for no other purposes unless specifically authorized by law and in that the employees of the departments of state government, and of state agencies, authorities, commissions, boards, bureaus, and other state entities located in the capitol building and other state buildings are engaged in the business of the citizens of the state and should not be unreasonably interrupted in the performance of their public duties, it is, therefore, in the best interest of the state and its citizens that a public policy against such unreasonable disruptions of state employees in the performance of their official duties be declared, and it is in this Code section so declared.

(b) Without the express written consent of the director of the Georgia Building Authority, his or her designee, or his or her successor in office first having been received and except as otherwise provided by state law, it shall be illegal for any person, firm, group, organization, or other entity to beg, panhandle, solicit, or to sell goods, wares, or any other objects or services within any buildings or on the grounds, sidewalks, or

other ways owned by or under the control of the state, its agencies, authorities, commissions, boards, bureaus, or other state entities.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) The authority or its legal successor shall establish the rules and regulations for and carry out the implementation of this Code section.

(e) Notwithstanding anything contained in this Code section or elsewhere, subsections (a) and (b) of this Code section shall not be applicable to persons, firms, organizations, corporations, or other entities doing business with the Department of Administrative Services or the activities in relation thereto; and this Code section shall be permissive in nature.

(f) Certified law enforcement officers employed by the Department of Public Safety and security personnel employed by or under contract with that department shall exercise such powers and duties as are authorized by law to keep watch over and protect the property of the authority in that area designated as Capitol Square by Code Section 50-2-28. Certified law enforcement officers employed by such department shall have jurisdiction to enforce all laws within such area. (Ga. L. 1969, p. 233, § 1; Ga. L. 1975, p. 885, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 554, § 1; Ga. L. 2010, p. 137, § 3/HB 1074.)

Cross references. — Declaration that use of capitol building and grounds shall be limited to departments of state government and to state and national political organizations, § 50-16-4. Further provisions regarding duties of security guards of authority and of Georgia State Patrol and Georgia Bureau of Investigation to deny persons entrance to and to remove persons from state buildings and property,

§ 50-16-14. Penalty for failure to vacate public property or building when so requested, § 50-16-16.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “bureaus” in subsections (a) and (b) and a comma was deleted following “other ways” in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction of Georgia Building Authority Police. — Jurisdiction of the Georgia Building Authority Police extends to properties of the Authority, those administered by the Authority, and in the cases of actual or imminent threat of harm or disruption, to any property or building utilized by the state or the state’s agencies. 1992 Op. Att’y Gen. No. 92-6.

Sales incidental to free speech activity. — Sale of goods, wares, or other

objects, when incidental and collateral to free speech activity otherwise permitted in a designated public forum may not be prohibited under the Buildings and Grounds Policies of the Georgia Building Authority or O.C.G.A. § 50-9-9(b). However, such activity is subject to existing time, place, and manner regulations contained in the policies as well as other statutory provisions. 1993 Op. Att’y Gen. No. 93-8.

RESEARCH REFERENCES

ALR. — Validity of regulation against solicitation in street for patronage of taxicabs, 42 ALR 282.

Validity, construction, and application of statute or ordinance prohibiting solici-

tation of passers-by in street in front of place of business, 139 ALR 1197.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 ALR5th 455.

50-9-10. Rules and regulations for operation of projects.

It shall be the duty of the authority to prescribe rules and regulations for the operation of each project or combination of projects constructed under this article and Article 2 of this chapter, including rules and regulations to ensure maximum use or occupancy of each such project. (Ga. L. 1951, p. 699, § 28.)

50-9-11. Acceptance of grants and contributions.

The authority, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of revenues, rents, and earnings derived under this chapter, shall have authority to accept from any federal agency grants for or in aid of the construction of any project or for the payment of bonds and to receive and accept contributions from any source of either money or property or other things of value to be held, used, and applied only for the purposes for which such grants or contributions may be made. (Ga. L. 1951, p. 699, § 25.)

50-9-12. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this article and Article 2 of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed trust funds to be held and applied solely as provided in this article and Article 2 of this chapter. (Ga. L. 1951, p. 699, § 26.)

50-9-13. Exemption from taxation.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this article and Article 2 of this chapter. This state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities

in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall include an exemption from all sales and use tax on property purchased, leased, or used by the authority. (Ga. L. 1951, p. 699, § 21; Ga. L. 1982, p. 3, § 50; Ga. L. 2010, p. 317, § 1/HB 333.)

JUDICIAL DECISIONS

Items exempt from taxation. — Authority is exempt from paying taxes on state-derived revenues as well as on the authority's other property. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 255, 256. seq., 328 et seq., 355, 357, 437, 443 et seq. 84 C.J.S., Taxation, § 314.
C.J.S. — 81A C.J.S., States, §§ 260 et

50-9-14. Jurisdiction and venue of actions.

Any action to protect or enforce any rights under this article and Article 2 of this chapter shall be brought in the Superior Court of Fulton County, and any action pertaining to validation of any bonds issued under this article and Article 2 of this chapter shall likewise be brought in such court which shall have exclusive, original jurisdiction of such actions. (Ga. L. 1951, p. 699, § 22.)

Law reviews. — For note discussing venue problems in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

JUDICIAL DECISIONS

Cited in *M.A.R.T.A. v. McCain*, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Venue, § 4. **C.J.S.** — 92A C.J.S., Venue, §§ 12, 51.

50-9-15. Provisions supplemental.

The Code sections of this article and Article 2 of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be

regarded as in derogation of any other powers. (Ga. L. 1951, p. 699, § 29.)

50-9-16. Liberal construction of provisions.

This article and Article 2 of this chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof. (Ga. L. 1951, p. 699, § 30.)

JUDICIAL DECISIONS

Cited in *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

50-9-17. Transferred authorities.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Building Authority as set forth in Code Section 50-9-2.

(2) “Transferred authorities” means the Georgia Building Authority (Markets) set forth in Article 1 of Chapter 10 of Title 2, the Georgia Building Authority (Hospital) set forth in Article 2 of Chapter 7 of Title 31, the Georgia Building Authority (Penal) set forth in Chapter 3 of Title 42, and the Agency for Removal of Hazardous Materials set forth in Article 4 of Chapter 9 of Title 50, as each entity existed as of June 30, 2008.

(b) Beginning July 1, 2008, all functions, duties, responsibilities, and obligations of the transferred authorities shall belong to the authority. The authority shall also succeed to the rights, claims, remedies, securities, and any other debt or obligation owing to the transferred authorities.

(c) The authority shall be substituted for the transferred authorities on any bonds, claims, causes of action, contracts, leases, agreements, or other indebtedness or obligations of the transferred authorities. Contracts held by the transferred authorities shall be considered contracts of the authority, and any rights of renewal, prerogatives, benefits, and rights of enforcement under such contracts shall also be transferred to the authority.

(d) Appropriations for functions transferred from the transferred authorities to the authority may be transferred as provided in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed for such transferred functions

shall likewise be transferred to the authority. Upon the effective date of the transfer, all personnel positions authorized for the transferred authorities shall be transferred to the authority and all employees whose positions are transferred to the authority shall become employees of the authority in the unclassified service as provided in Code Section 45-20-6.

(e) All assets, moneys, properties both tangible and intangible, and other valuable instruments and consideration belonging to the transferred authorities on the date of transfer shall become the property and assets of the authority.

(f) Rules and regulations previously adopted by the transferred authorities shall remain in full force and effect as rules and regulations of the authority until amended, repealed, or superseded by action of the authority. (Code 1981, § 50-9-17, enacted by Ga. L. 2008, p. 224, § 5/SB 130.)

ARTICLE 2

REVENUE BONDS

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

50-9-30. Issuance authorized; amount; interest; redemption.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created in Article 1 of this chapter, shall have power and is authorized at one time, or from time to time, to provide by resolution for the issuance of negotiable revenue bonds in the sum not to exceed \$59 million outstanding at any one time of the authority for the purpose of paying all or any part of the cost as defined in Code Section 50-9-2 of any one or combination of projects. The principal and interest of the revenue bonds shall be payable solely from the special fund provided in Code Section 50-9-42 for such payment. The bonds of each issue shall be dated; shall bear interest at the lowest obtainable rate, payable in such medium of payment as to both principal and interest as may be determined by the authority; and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. (Ga. L. 1951, p. 699, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 355, § 2; Ga. L. 1955, p. 585, § 2; Ga. L. 1961, p. 587, § 3; Ga. L. 1962, p. 660, § 2; Ga. L. 1963, p. 422, § 1; Ga. L. 1972, p. 247, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 13, 37, 39. **C.J.S.** — 81A C.J.S., States, §§ 349 et seq., 368, 437, 443.

50-9-31. Form, denomination, place of payment, registration.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest. (Ga. L. 1951, p. 699, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 12, 23. **C.J.S.** — 81A C.J.S., States, §§ 442, 449 et seq.

50-9-32. Valid signatures, seal, attestation.

In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be an officer before the delivery of the bonds, the signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. All such bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of the bonds shall be duly authorized or hold the proper office, although at the date of the bonds the persons may not have been so authorized or shall not have held such office. (Ga. L. 1951, p. 699, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 153. **C.J.S.** — 11 C.J.S., Bonds, § 10. 81A C.J.S., States, §§ 441, 442.

50-9-33. Negotiable instruments; exempt from taxation.

All revenue bonds issued under this article and Article 1 of this chapter shall have and are declared to have all the qualities and

incidents of negotiable instruments under the negotiable instruments law of the state. The bonds and the income therefrom shall be exempt from all taxation within the state. (Ga. L. 1951, p. 699, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 206. 71 Am. Jur. 2d, State and Local Taxation, § 253.

C.J.S. — 11 C.J.S., Bonds, § 63. 81A C.J.S., States, §§ 446, 447. 84 C.J.S., Taxation, § 315.

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

50-9-34. Manner and price of sale.

The authority may sell the bonds in such manner and for such price as it may determine to be for the best interests of the authority. (Ga. L. 1951, p. 699, § 9; Ga. L. 1960, p. 192, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 174.

C.J.S. — 81A C.J.S., States, § 451 et seq.

50-9-35. Proceeds to be used for project costs; disbursed under restrictions; additional bonds authorized to provide for deficit; surplus to be paid into fund.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or combined project and shall be disbursed upon requisition or order of the chairman of the authority under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture may provide. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined project, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of the deficit, which unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the fund provided in Code Section 50-9-42 for the payment of principal and interest of such bonds. (Ga. L. 1951, p. 699, § 10; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 313, 322. **C.J.S.** — 81A C.J.S., States, §§ 437, 443 et seq.

50-9-36. Interim certificates and temporary bonds authorized.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (Ga. L. 1951, p. 699, § 11; Ga. L. 1994, p. 97, § 50.)

50-9-37. Replacement of mutilated or lost bonds.

The authority may also provide for the replacement of any bond which becomes mutilated or is destroyed or lost. (Ga. L. 1951, p. 699, § 12.)

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Lost and Destroyed Instruments, § 7. **C.J.S.** — 54 C.J.S., Lost Instruments, § 3 et seq.

50-9-38. No other conditions precedent; issuance for combination of projects authorized; passage and effective date of resolution.

The revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this article or Article 1 of this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this article or Article 1 of this chapter shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members. (Ga. L. 1951, p. 699, § 13; Ga. L. 1982, p. 3, § 50.)

50-9-39. Not debt or pledge of credit of state; bonds to contain recital of provisions.

Revenue bonds issued under this article and Article 1 of this chapter shall not be deemed to constitute a debt of the state or a pledge of the

faith and credit of the state, but the bonds shall be payable solely from the fund provided for in Code Section 50-9-42; and the issuance of the revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for the payment. All such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section; provided, however, that such funds as may be received from state appropriations or from any other source are declared to be available to any department, board, commission, or agency of the state and may be used for the performance of any lease contract entered into by such department, board, commission, or agency of the state. (Ga. L. 1951, p. 699, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 13.

C.J.S. — 81A C.J.S., States, §§ 449, 450.

50-9-40. Trust indentures as security; provisions.

In the discretion of the authority, any issue of the revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. The trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority. Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys and may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or the trust indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is custom-

ary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by the indenture. (Ga. L. 1951, p. 699, § 15.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 159.

C.J.S. — 81A C.J.S., States, §§ 439, 448.

50-9-41. Authority to provide for payment of proceeds to person or agency as trustee.

The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who or any agency, bank, or trust company which shall act as trustee of such funds and shall hold and apply the same to the purposes hereof, subject to such regulations as this article and Article 1 of this chapter and the resolution or trust indenture may provide. (Ga. L. 1951, p. 699, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 159.

C.J.S. — 81A C.J.S., States, §§ 437, 443 et seq.

50-9-42. Sinking fund; pledge and allocation of funds to pay principal and interest.

The revenues, rents, and earnings derived from any particular project or combined project or any and all funds from any source received by any department, board, commission, or agency of the state and pledged and allocated by it to the authority as security for the performance of any lease or leases or any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued unless otherwise pledged and allocated, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or in the trust instrument may provide; and such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

- (1) The interest upon the revenue bonds as the interest falls due;
- (2) The principal of the bonds as the same falls due;
- (3) The necessary charges of paying agents for paying principal and interest; and
- (4) Any premium upon bonds retired by call or purchase as hereinabove provided.

The use and disposition of the sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in the resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another. Subject to the resolution authorizing the issuance of the bonds or in the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds; and any such bonds so purchased or redeemed shall immediately be canceled and shall not again be issued. (Ga. L. 1951, p. 699, § 17; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 313, 322 et seq. **C.J.S.** — 81A C.J.S., States, §§ 383 et seq., 439 et seq.

50-9-43. Rights and remedies of bondholders.

Any holder of revenue bonds or interest coupons issued under this article, any receiver for such holders, or indenture trustee, if there is any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this article or Article 1 of this chapter or by resolution or trust indenture, to be performed by the authority, or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, any such holder, receiver, or indenture trustee shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the authority may possess against the state or any department, agency, or institution of the state and, in the pursuit of its remedies as subrogee, may proceed either at law or in equity by action, mandamus, or other proceedings to collect

any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which the individual, receiver, or trustee is representative. No holder of any such bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state; provided, however, any provision of this article or Article 1 of this chapter or any other law to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including, without being limited to, mandamus, to enforce compliance by the appropriate public officials of Article VII, Section IV of the Constitution of this state; and permission is given for the institution of any such proceedings to compel the payment of lease obligations. (Ga. L. 1951, p. 699, § 18; Ga. L. 1964, p. 108, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 2002, p. 415, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 383. **C.J.S.** — 81A C.J.S., States, § 440.

50-9-44. Refunding bonds.

The authority is authorized to provide by resolution for the issue of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this article and Article 1 of this chapter and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by this article and Article 1 of this chapter insofar as the same may be applicable. (Ga. L. 1951, p. 699, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 199, 200. **C.J.S.** — 81A C.J.S., States, §§ 454, 455.

50-9-45. Authorized investment and deposit securities.

The bonds authorized by this article and Article 1 of this chapter are made securities in which all public officers and bodies of this state and all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance

business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state may be authorized. (Ga. L. 1951, p. 699, § 20.)

50-9-46. Validation; parties defendant to action; judgment final and conclusive.

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law." The petition for validation shall also make party defendant to such action any authority, subdivision, instrumentality, or agency of the state which has contracted with the authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated; and such authority, subdivision, instrumentality, or agency shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof determined and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and any authority, subdivision, instrumentality, or agency contracting with the authority. (Ga. L. 1951, p. 699, § 23; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 289 et seq., 394. **C.J.S.** — 11 C.J.S., Bonds, § 107. 81A C.J.S., States, §§ 441, 442.

50-9-47. Interests and rights of bondholders not to be adversely affected; provisions constitute contract.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such

bonds; and no other entity, department, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interests and rights of the holders of the bonds, nor will the state itself so compete with the authority. This article and Article 1 of this chapter shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of the bonds. (Ga. L. 1951, p. 699, § 24.)

ARTICLE 3

EXECUTIVE CENTER FINE ARTS COMMITTEE

50-9-60. Creation of committee; membership.

There is created as a division and arm of the Georgia Building Authority the Executive Center Fine Arts Committee, to be composed of nine members appointed by the Governor. No employee of the state nor any member of the General Assembly shall be eligible for appointment as a member of the committee. All members shall be deemed members at large charged with the responsibility of serving the best interests of the state as a whole. (Ga. L. 1975, p. 212, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following “Authority” in the first sentence.

50-9-61. Terms of members; appointment; vacancies; honorary chairman; advisory groups; no compensation for services or expenses; reimbursement from private funds.

Of the members first appointed under this article, three shall be appointed for terms of one year, three for terms of three years, and three for terms of five years. After the original appointment, each subsequent appointment shall be for terms of five years. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. The spouse of the Governor shall be honorary chairman of the committee. The committee shall elect its chairman for a term of three years. The chairman may appoint other advisory and cooperative groups, who may not necessarily be members of the committee. Members of the committee shall not receive any compensation for their services, nor shall they receive any per diem, travel, or expense allowance from any state funds whatsoever. Members of the committee may, however, be reimbursed for their actual expenses from private funds donated for such purpose. (Ga. L. 1975, p. 212, § 1.)

50-9-62. Powers and duties.

The committee shall have the following powers and responsibilities and shall perform the following duties:

(1) Promote a greater understanding and awareness of the history and significance of the executive mansion;

(2) Take leadership in guiding the development of research and publications on the history and significance of the executive mansion, thus establishing a continuity of effort in this area;

(3) Encourage, approve, and accept contributions and bequests and gifts or loans of furniture, works of art, memorabilia, and other personal property for its use in carrying out the purposes of the committee and its powers and responsibilities;

(4) Purchase appropriate period furnishings, books, and works of art for the executive mansion and exchange or sell personal property acquired subsequent to March 26, 1975, tangible or intangible, which has been acquired by the committee through gifts or otherwise from other public or private organizations, associations, or individuals;

(5) Make recommendations to the Georgia Building Authority for the purchase of any furnishings or other property or for the exchange or sale of any existing inventory at the executive mansion as of March 26, 1975;

(6) Acquire or provide for accession and replacement of objects for the executive mansion;

(7) Administer all funds, public and private, made available to the committee and disburse such funds in accordance with the purposes of this article; and

(8) Keep a complete list of all furnishings and of all gifts and articles received, together with their history and value, and request the assistance of the Division of Archives and History for this purpose. (Ga. L. 1975, p. 212, § 1; Ga. L. 2002, p. 532, § 21.)

50-9-63. Employment and compensation of personnel.

The committee may employ and fix the compensation of researchers, writers, curators, and other such consultants and professional personnel as it may deem necessary to assist in the exercise and performance of its duties. (Ga. L. 1975, p. 212, § 1.)

50-9-64. State agencies authorized to cooperate with committee.

All departments, commissions, boards, agencies, officers, and institutions of the state or any political subdivisions thereof are authorized

and directed to cooperate with the committee in carrying out the purposes of this article. (Ga. L. 1975, p. 212, § 1.)

50-9-65. Moneys received to be in special fund; property to become state property and may be sold or exchanged.

All moneys received by the committee shall be set aside as a special fund to be used by the committee to carry out the purposes of this article. All other personal property, tangible or intangible, which is acquired by the committee subsequent to March 26, 1975, shall become the property of the state upon such acquisition. The personal property may be sold or exchanged by the committee as agent for the state, notwithstanding any other provision of law concerning the sale or exchange of personal property of the state, provided that nothing contained in this Code section shall be construed to permit the committee to make a gift of any such personal property. (Ga. L. 1975, p. 212, § 1; Ga. L. 1982, p. 3, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “article” was substituted for “Article” in the first sentence.

50-9-66. Accountability for funds; committee as instrumentality of state; not amenable to action; enjoys sovereign immunity.

(a) The committee shall maintain and account for funds received by it for its purposes separately from the funds of the Georgia Building Authority.

(b) To the extent otherwise provided by law, the Georgia Building Authority may make its funds available to the committee for the purposes of the committee and shall be empowered to provide such other assistance to the committee as the committee and the authority deem appropriate.

(c) The committee, as a division and arm of the Georgia Building Authority, shall hold the status of the authority as a public body corporate and politic and an instrumentality of the state, but neither the committee nor its members shall be amenable to any action of any kind or nature arising out of the discharge of its powers and responsibilities under this article. The committee shall otherwise have and enjoy the sovereign immunity of the state. (Ga. L. 1975, p. 212, § 1.)

Cross references. — Waiver of sovereign immunity in actions for breach of written contracts where state is a party, § 50-21-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25.

ARTICLE 4**HAZARDOUS MATERIALS REMOVAL AGENCY**

Cross references. — Hazardous waste management, § 12-8-60 et seq.

50-9-80 through 50-9-84.

Reserved. Repealed by Ga. L. 2008, p. 224, § 6, effective July 1, 2008.

Editor's notes. — This article was based on Code 1981, §§ 50-9-80 through 50-9-84, enacted by Ga. L. 1986, p. 829, § 1; Ga. L. 2005, p. 694, § 8/HB 293.

ARTICLE 5**PURCHASE OF MATERIALS AND FIXTURES BASED ON LIFE CYCLE COSTS****50-9-100. “Life cycle costs” defined.**

As used in this article, the term “life cycle costs” means the total costs associated with the use of building materials and fixtures, including the initial cost of acquisition and the cost of installation, operation, energy use, maintenance, and disposal of such material or fixture. (Code 1981, § 50-9-100, enacted by Ga. L. 1993, p. 1398, § 1.)

50-9-101. Purchase of materials and fixtures to be based on life cycle costs.

Any other provision of law to the contrary notwithstanding, the authority created by Article 1 of this chapter and all other state departments, agencies, and authorities shall purchase building materials and fixtures for use in the construction, reconstruction, renovation, and operation of state buildings and facilities taking into account life cycle costs in addition to acquisition cost. (Code 1981, § 50-9-101, enacted by Ga. L. 1993, p. 1398, § 1.)

ARTICLE 6**INVENTORY OF STATE BUILDINGS****50-9-110 and 50-9-111.**

Repealed by Ga. L. 2005, p. 100, § 6/SB 158, effective April 12, 2005.

Editor's notes. — This article was 50-9-111 enacted by Ga. L. 1999, p. 661, based on Code 1981, §§ 50-9-110 and § 1; Ga. L. 2000, p. 136, § 50.

CHAPTER 10

GEORGIA DEVELOPMENT AUTHORITY

Sec.		Sec.	
50-10-1.	Short title.	50-10-5.	Powers and duties.
50-10-2.	Legislative intent.	50-10-6.	Exemption from taxation.
50-10-3.	Creation of authority; administration by agriculture department.	50-10-7.	Certain notes exempt from intangible tax.
50-10-4.	Purpose; powers under business corporation law; prohibition against loans to persons convicted of controlled substance offense.	50-10-8.	Approval of bond issues by financing and investment commission.
		50-10-9.	Rights under federal Constitution.
		50-10-10.	Liberal construction.

Cross references. — Georgia Environmental Facilities Authority, T. 50, C. 23.

Editor’s notes. — Ga. L. 1986, p. 705, § 4, effective April 2, 1986, repealed former Code Sections 50-10-4 through 50-10-21 and enacted current Code Sections 50-10-4 through 50-10-10. The former Code Sections 50-10-4 through 50-10-21 were based on Ga. L. 1953, p. 337, § 18; Ga. L. 1957, p. 210, § 2; Ga. L. 1960, p. 764, § 2; Ga. L. 1983, p. 1026, § 3; Ga. L. 1984, p. 22, § 50; Ga. L. 1985, p. 252, §§ 2-4; and Ga. L. 1986, p. 10, § 50.

Ga. L. 1986, p. 705 contained two sections designated “§ 4,” one of which repealed and reenacted Code Section 50-10-4 et seq. and the other of which provided an effective date for the Act.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 19 et seq., 30 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 19 et seq., 72 et seq.

50-10-1. Short title.

This chapter may be cited as the “Georgia Development Authority Act.” (Ga. L. 1953, Jan.-Feb. Sess., p. 337, § 1; Ga. L. 1960, p. 764, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Exemption from intangible property tax. — Georgia Development Authority is exempt from intangible tax on the authority’s property including the authority’s direct long term mortgage notes; of course, the holder of long term mortgage notes is not exempt from paying intangible taxes on property when the Georgia Development Authority merely guarantees or insures payment. 1963-65 Op. Att’y Gen. p. 31.

50-10-2. Legislative intent.

(a) It is the purpose and intent of this chapter to provide an instrumentality to assist agricultural and industrial interests in their

effort to commence, expand, or diversify their operations by providing credit and servicing functions to better enable the farmers and businessmen within this state to obtain needed capital funds and to encourage and secure financial institutions in the lending of money for such purposes.

(b) It is the purpose of this chapter to clothe the authority with corporate power to operate and to administer the funds held and received by it and to possess and operate under licenses or permits granted it by the United States or this state. (Ga. L. 1957, p. 210, § 1; Ga. L. 1960, p. 764, § 1; Ga. L. 1983, p. 1026, § 1; Ga. L. 1986, p. 705, § 1.)

50-10-3. Creation of authority; administration by agriculture department.

(a) There is created a body corporate and politic to be known as the Georgia Development Authority which shall be deemed an instrumentality of the state and a public corporation; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. The authority shall consist of seven members: the Commissioner of Agriculture, ex officio, who shall be chairperson of the authority; the state auditor, ex officio; the commissioner of economic development, ex officio; two members of the public appointed by the Governor; and two members representing the interests of agriculture appointed by the Governor. Appointed members shall serve for terms of office of four years and until their successors are appointed and qualified. The authority shall be deemed to be the successor in law and interest to the Georgia Development Authority created by the General Assembly in Ga. L. 1960, p. 764, as amended by Ga. L. 1983, p. 1026.

(b) A majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The members of the authority shall be entitled to and shall be reimbursed for their actual travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority shall make rules and regulations for its own government. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter. The Attorney General shall provide legal services for the authority and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(c) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all

actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining a certified audit of the authority's finances.

(d) All assets received by the authority under the terms of Public Law 499, Eighty-first Congress, Second Session, and all assets of the authority derived therefrom, shall be administered by the authority under the terms of such law, and the authority shall be authorized to employ agents to accomplish such administration. The authority shall not at any time commingle assets provided to the authority under the terms of Public Law 499, Eighty-first Congress, Second Session, with other assets of the authority. The authority shall maintain a separate accounting of such assets and shall maintain suitable books and records of such assets which shall be audited as are the books and records of the authority for other assets.

(e) The authority is assigned to the Department of Agriculture for administrative purposes only. (Ga. L. 1953, Jan.-Feb. Sess., p. 337, § 2; Ga. L. 1960, p. 764, § 4; Ga. L. 1983, p. 1026, § 2; Ga. L. 1984, p. 22, § 50; Ga. L. 1984, p. 420, § 1; Ga. L. 1985, p. 149, § 50; Ga. L. 1986, p. 705, §§ 2, 3; Ga. L. 1989, p. 1641, § 15; Ga. L. 2004, p. 690, § 41.)

Editor's notes. — Ga. L. 1989, p. 1641, which amended this Code section, provides in § 18, not codified by the General Assembly: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session, referred to in this Code section, was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

OPINIONS OF THE ATTORNEY GENERAL

Invalid criterion for membership in Authority. — Functions of the Georgia Development Authority involve the exercise of executive powers within the meaning of Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II,

Para. III); thus, the qualification of members for appointment by the Governor of membership in the General Assembly was invalid. 1975 Op. Att'y Gen. No. 75-142 (decided prior to 1986 amendment).

50-10-4. Purpose; powers under business corporation law; prohibition against loans to persons convicted of controlled substance offense.

(a) The corporate purpose and the general nature of the business of the Georgia Development Authority shall be:

(1) Rural rehabilitation permissible under the charter of the Georgia Rural Rehabilitation Corporation and contained in para-

graph (3) thereof and within the meaning of Public Law 499, Eighty-first Congress, Second Session;

(2) The development of agriculture and industry generally within the state by providing, securing, or guaranteeing loans for such purposes; and

(3) Possession of and operation under any franchise, license, or permit granted to it by the United States or this state for a business purpose.

(b) The corporate powers of the authority shall be those provided in this chapter and those additional powers provided in the introductory clause and in paragraphs (1) through (5), (7), (10), and (11) of Code Section 14-2-302 and in Code Section 14-2-825.

(c)(1) As used in this subsection, the term:

(A) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21. Such term shall also include marijuana as it is defined in paragraph (16) of Code Section 16-13-21.

(B) "Convicted" means a plea of guilty or a finding of guilty by a court of competent jurisdiction, irrespective of the pendency or availability of an appeal or an application for collateral relief.

(C) "Person" means a natural person, a corporation which has a convicted person as an officer or member of the board of directors, or a partnership or association which includes a convicted person as a member.

(2)(A) The Georgia Development Authority shall not provide, secure, or guarantee a loan to any person who, at the time such loan is provided, secured, or guaranteed, has been convicted, after April 16, 1990, under the laws of this state, under the laws of the United States, or under the laws of any of the other states or jurisdictions of the United States, of an offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance; provided, however, that the provisions of this paragraph shall not apply in the case of a conviction in which a person does not lose his civil rights or to a person who has had his civil rights restored prior to the time such loan is provided, secured, or guaranteed.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the authority shall not be required to verify or make any independent investigation as to whether an applicant for a loan on or after July 1, 1990, has been convicted of one of the

proscribed offenses enumerated in subparagraph (A) of this paragraph nor, though it shall not be precluded, shall it be required to foreclose upon such a loan upon later learning that an individual had been convicted of one of the proscribed offenses enumerated in subparagraph (A) of this paragraph prior to application. (Code 1981, § 50-10-4, enacted by Ga. L. 1986, p. 705, § 4; Ga. L. 1989, p. 946, § 115; Ga. L. 1990, p. 2026, § 1; Ga. L. 1994, p. 97, § 50.)

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session, referred to in this Code section, was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 391 (1990).

50-10-5. Powers and duties.

(a)(1) In addition to, and not in limitation of, the powers granted in this chapter, the Georgia Development Authority shall have and may exercise the power and authority to:

(A) Guarantee or insure loans made for rural rehabilitation purposes or for agricultural and industrial development, provided that, with respect to any such guarantee or contract of insurance made by the authority involving an asset provided to the authority under Public Law 499, Eighty-first Congress, Second Session, the authority shall maintain a reserve or insurance fund out of such assets in an amount not less than 15 percent of the contingent liability existing by reason of any such contracts of insurance or guarantee. The reserve or insurance fund of the authority may be invested; and

(B) Borrow money from funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., and administered by the Georgia Environmental Finance Authority pursuant to paragraph (30) of subsection (b) of Code Section 50-23-5 and to use the same to make loans to finance eligible water pollution control projects which are designed to mitigate pollution from agricultural operations. The borrowing of such moneys and administration of such loans made by the Georgia Development Authority shall be in accordance with federal requirements.

(2) Any funds or assets of the authority obtained under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds derived from such funds or assets, shall not be liable for any deficit, default, or failure of any environmental facility project and the authority shall not be obligated on, responsible for, or liable on any obligation of any kind entered into relating to environmental

facility projects. The authority shall only be responsible for those obligations related to the funds or assets of the authority received under Public Law 499, Eighty-first Congress, Second Session and funds or assets derived therefrom.

(b) In addition to the powers granted in Code Section 50-10-4 and subsection (a) of this Code section, the authority shall have the power:

(1) To bring and defend an action in all courts, the original jurisdiction and venue of such actions against the authority being in the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, and to make loans, to provide security for loans, or to guarantee loans for the purpose of developing agriculture or industry; provided, however, that the authority shall not make any such loan or guarantee or provide any such security or issue any bonds, notes, or other obligations in connection therewith, unless the authority shall adopt a resolution finding that the project for which such loan or guarantee is to be made or for which such security is to be provided will promote the development of agriculture or industry;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(6) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(7) To collect fees and charges in connection with its loans, commitments, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(8) To invest, subject to any agreement with bondholders, moneys of the authority not required for immediate use to carry out the

purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of federal savings and loan associations and state building and loan associations located within the state which have deposits insured by the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the federal Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys and provided, further, that all moneys in each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall be continuously and fully secured by obligations described in subparagraph (A), (B), (C), or (D) of this paragraph, equal at all times to the amount of the interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangements;

(9) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(10) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (8) of this subsection, provided that, for the purposes of

this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments schedule for which such moneys are to be applied;

(11) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(12) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine;

(13) To adopt bylaws governing the conduct of business by the authority, the election of officers of the authority other than the chairman, the duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(14) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(15) To do all things necessary or convenient to carry out the powers conferred by this chapter; and

(16) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the powers of the authority in the management of the affairs and property of the authority and the exercise of its power.

(c) The authority shall not have the power of eminent domain.

(d) No person shall be eligible to receive a loan from the first-time farmer tax-free note program of the authority, or any similar loan program established by the authority after July 1, 1986, unless such person has demonstrated to the satisfaction of the authority that such person has the ability to and intends to derive at least 25 percent of his or her livelihood from agricultural operations. (Ga. L. 1986, p. 656, § 1; Code 1981, § 50-10-5, enacted by Ga. L. 1986, p. 705, § 4; Ga. L. 2001, p. 1225, § 1; Ga. L. 2010, p. 949, § 1/HB 244.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in the introductory sentence in subsection (b), “subsection (a)” was substituted for “subsection (b)”; in paragraph (b)(3), “guar-

anty” was changed to “guarantee” in two places; and, in paragraph (b)(10), a comma was deleted following “interest payments” near the end.

Pursuant to Code Section 28-9-5, Ga. L.

1986, p. 656, § 1 was treated as an amendment to this Code section, as enacted by Ga. L. 1986, p. 705, § 4, and designated as subsection (d).

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session, re-

ferred to in this Code section, was codified at 40 U.S.C. §§ 440 through 444, but, has been omitted as having been executed. The federal Bank Holding Company Act of 1956, referred to in this Code section, is codified at 12 U.S.C. § 1841 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-10-5, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Financing construction of environmental facilities. — Georgia Develop-

ment Authority may enter into contracts with local governments, including local water and sewer authorities, for any period not to exceed 50 years to provide funds to finance the construction of environmental facilities by local governments and for related services. 1985 Op. Att'y Gen. No. 85-29.

50-10-6. Exemption from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this chapter that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this chapter shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1981, § 50-10-6, enacted by Ga. L. 1986, p. 705, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "is" was changed to "are" in the first sentence.

50-10-7. Certain notes exempt from intangible tax.

Long-term notes secured by real estate and held by the authority or its assignees shall be exempt from the intangible recording tax imposed by Article 3 of Chapter 6 of Title 48. (Code 1981, § 50-10-7, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-8. Approval of bond issues by financing and investment commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor. (Code 1981, § 50-10-8, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-9. Rights under federal Constitution.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this chapter shall be construed to remove any such rights. (Code 1981, § 50-10-9, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-10. Liberal construction.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter. (Code 1981, § 50-10-10, enacted by Ga. L. 1986, p. 705, § 4.)

CHAPTER 11

STATE LAW LIBRARY

50-11-1 through 50-11-10.

Reserved. Repealed by Ga. L. 2008, p. 267, § 1, effective May 6, 2008.

Editor's notes. — This chapter consisted of Code Sections 50-11-1 through 50-11-10, and was based on Laws 1783, Cobb's 1851 Digest, p. 665; Laws 1847, Cobb's 1851 Digest, p. 1037; Ga. L. 1851-52, p. 11, § 25; Ga. L. 1861, p. 74, § 2; Orig. Code 1863, §§ 112, 113, 115, 117, 118; Code 1863, §§ 111, 112, 114, 116, 969, 970, 971, 972, 974; Ga. L. 1868, p. 195, §§ 1-4; Code 1868, §§ 106 through 113, 1051 through 1055; Code 1873, §§ 115 through 122, 1046, 1047, 1048, 1049, 1051; Ga. L. 1874, p. 25, § 2; Ga. L. 1880-81, p. 69, § 1; Code 1882, §§ 115, 116, 117, 118, 119, 120, 121, 122, 796, 1046, 1047, 1048, 1049, 1051; Ga. L. 1884-85, p. 134, § 2; Ga. L. 1884-85, p. 139, §§ 1, 2; Ga. L. 1889, p. 153, §§ 1, 2; Ga. L. 1889, p. 181, §§ 1, 2; Civil Code 1895, §§ 149-157, 159, 163, 165, 166-, 171, 172; Ga. L. 1904, p. 50, § 1; Ga. L. 1909, p. 141, §§ 1-3, 5; Ga. L. 1909, p. 143, § 1; Civil Code 1910, §§ 172-181, 183,

185, 188, 190-, 198-201; Ga. L. 1912, p. 45, § 1; Ga. L. 1916, p. 133, § 1; Ga. L. 1918, p. 108, § 1; Ga. L. 1919, p. 369, § 1; Code 1933, §§ 101-101—101-104, 101-201—101-203, 101-205—101-210, 101-212—214, 101-217, 101-218; Code 1933, §§ 101-102, 101-104, 101-105, 101-106, enacted by Ga. L. 1947, p. 1166, § 1; Ga. L. 1956, p. 729, § 1; Ga. L. 1956, p. 804, § 1; Ga. L. 1957, p. 596, §§ 1-3; Ga. L. 1972, p. 1015, § 1402; Ga. L. 1972, p. 1253, §§ 1, 2; Code 1933, §§ 101-101—101-105, enacted by Ga. L. 1975, p. 741, § 2; Code 1933, §§ 101-201—101-205, enacted by Ga. L. 1975, p. 741, § 3; Ga. L. 1978, p. 2288, § 1; Ga. L. 1981, p. 818, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 702, §§ 2-4; Ga. L. 1983, p. 3, § 39; Ga. L. 1984, p. 22, § 50; Ga. L. 1985, p. 149, § 50; Ga. L. 1989, p. 1129, §§ 1, 2, 4, 5; Ga. L. 2002, p. 532, § 22.

CHAPTER 12

COMMISSIONS AND OTHER AGENCIES

Article 1

Georgia Commission for the
National Bicentennial Celebration

Sec.

50-12-1 through 50-12-7 [Repealed].

Article 2

Georgia Council for the Arts

PART 1

GENERAL PROVISIONS

- 50-12-20. Legislative findings and declaration of public policy.
- 50-12-21. Creation of council.
- 50-12-22. Appointment of members; terms; vacancies; expenses; removal; chairperson; meetings.
- 50-12-23. Powers and duties generally.
- 50-12-24. Annual report.
- 50-12-25. Powers and authority of Department of Economic Development as to council.
- 50-12-26. Appointment of personnel for council.

PART 2

GEORGIA ARTS ALLIANCE

- 50-12-30. Legislative findings.
- 50-12-31. Creation of Georgia Arts Alliance; purpose; governing organization; appointment of members of board of trustees; terms; advisory committee.
- 50-12-32. Purposes.
- 50-12-33. Duties and responsibilities of board of trustees.
- 50-12-34. Independent audit; reporting.
- 50-12-35. Recommendations to Governor and General Assembly.

Article 3

Georgia State Games Commission

- 50-12-40. Definitions.
- 50-12-41. Creation of Georgia State Games Commission; purpose; administration.

Sec.

- 50-12-42. Purpose of article.
- 50-12-43. Membership of commission; term of office; chairman; meetings; quorum; rules; vacancies.
- 50-12-44. Promotion of physical fitness and sports.
- 50-12-45. Assistance by direct-support organization; contract with organization; pattern and design of games; frequency and sites; subsidiary corporations.
- 50-12-46. Authority of Governor to permit use of property, facilities, and services by direct-support organization.
- 50-12-47. Audit of Georgia State Games direct-support organization.
- 50-12-48. Annual report of commission; budget.

Article 4

Halls of Fame

PART 1

GEORGIA SPORTS HALL OF FAME

50-12-60 through 50-12-63.1 [Repealed].

PART 2

GEORGIA GOLF HALL OF FAME

50-12-64 through 50-12-69.1 [Repealed].

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

- 50-12-70. Creation of Aviation Hall of Fame; board assigned to Department of Economic Development.
- 50-12-71. Appointment, terms, and expenses of board members.
- 50-12-72. Purpose and function of board.
- 50-12-72.1. Powers granted to board.
- 50-12-73. Headquarters; halls, rooms,

Sec.

quarters, and offices; designation of facilities as part of hall of fame; official repository for aviation history.

- 50-12-74. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.

Subpart 2

Overview Committees

- 50-12-75. Designation of overview committees to review and evaluate Aviation Hall of Fame Board.
- 50-12-76. State agencies to provide assistance to overview committees upon request; utilization of independent services by committees.
- 50-12-77. Reports by overview committees.
- 50-12-78. Criteria to be utilized by committees in evaluating Aviation Hall of Fame Board.
- 50-12-79. Expenditure of funds by overview committees.

Article 5

Georgia Commission on Women

- 50-12-80. Creation of commission; appointments to and vacancies in membership; staggered terms.
- 50-12-81. Officers; quorum.
- 50-12-82. Powers and duties; cooperation with other agencies.
- 50-12-83. Reimbursement for expenses.
- 50-12-84. Annual report.
- 50-12-85 through 50-12-87 [Repealed].

Article 6

**Constitutional Amendments
Publication Board**

- 50-12-100. Creation of board; composition; purpose; chairman; vote requirements.
- 50-12-101. Assignment of numbers by board to proposed constitutional amendments and Constitutions; use of numbers by

Sec.

Secretary of State for election ballots; assignment of short titles or headings.

Article 7

Georgia Hall of Fame Commission

50-12-110 through 50-12-112 [Repealed].

Article 8

Georgia Commission on the Holocaust

- 50-12-130. Creation of Georgia Commission on the Holocaust.
- 50-12-131. Membership; terms; qualifications; officers; quorum; powers and duties.
- 50-12-132. Annual reports; vacancies; advisory committees and advisors.
- 50-12-133. Commission authorized to solicit donations.

Article 9

War of 1812 Bicentennial Commission

- 50-12-140. (Repealed effective December 31, 2015) Short title.
- 50-12-141. (Repealed effective December 31, 2015) Legislative findings; commemorative activities to enhance public understanding of historical time period; purpose of commission; international involvement; promotion of tourism and economic development.
- 50-12-142. (Repealed effective December 31, 2015) Definitions.
- 50-12-143. (Repealed effective December 31, 2015) Membership and structure of commission; responsibilities.
- 50-12-144. (Repealed effective December 31, 2015) Reporting on gifts, bequests or devises received; final report.
- 50-12-145. (Repealed effective December 31, 2015) Authority of commission.
- 50-12-146. (Repealed effective December 31, 2015) Compensation of

Sec.

members, executive director,
and other personnel.

Sec.

50-12-147. (Repealed effective December
31, 2015) Termination.

Editor’s notes. — Ga. L. 1981, p. 1472, not codified by the General Assembly, created the Georgia Semiquincentenary Commission, which was abolished January 1, 1984, by the terms of the 1981 Act.

Article 8 of Chapter 12 of Title 50 (former Code Sections 50-12-130 through 50-12-137), relating to the Georgia Com-

mission on State Growth Policy, was enacted as Chapter 21 of Title 50 by Ga. L. 1982, p. 2261, § 1, redesignated as this article by Ga. L. 1983, p. 3, § 39, and amended by Ga. L. 1984, p. 381, §§ 1 through 4. The article was repealed pursuant to Code Section 50-12-137, which provided for the repeal on June 30, 1985.

ARTICLE 1

GEORGIA COMMISSION FOR THE NATIONAL BICENTENNIAL CELEBRATION

50-12-1 through 50-12-7.

Reserved. Repealed by Ga. L. 1991, p. 94, § 50, effective March 14, 1991.

Editor’s notes. — Ga. L. 1991, p. 94, § 50, effective March 14, 1991, repealed the Code sections formerly codified as Article 1 of this chapter. The former article

consisted of Code Sections 50-12-1 through 50-12-7 and was based on Ga. L. 1973, p. 311, §§ 1 through 7; Ga. L. 1974, p. 430, § 1; Ga. L. 1975, p. 492, § 1.

ARTICLE 2

GEORGIA COUNCIL FOR THE ARTS

Administrative rules and regulations. — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Council for the Arts, Chapter 269-1.

Law reviews. — For article, “Intellectual

Property Checklist for Marketing the Recording Artist Online,” see 18 J. Intell. Prop. L. 541 (2011). For article, “Clearing the Way: Acquiring Rights and Approvals for Music Use in Media Applications,” see 18 J. Intell. Prop. L. 561 (2011).

PART 1

GENERAL PROVISIONS

Editor’s notes. — Ga. L. 2008, p. 614, § 1, effective July 1, 2008, designated

Code Sections 50-12-20 through 50-12-26 as Part 1 of this Article.

50-12-20. Legislative findings and declaration of public policy.

The General Assembly finds that the general welfare of the people of this state will be promoted by giving recognition to the arts as a vital part of our culture and heritage and economic development. The arts industry fuels cultural heritage tourism, the fastest growing segment of tourism; is a catalyst for community revitalization, boosting local economies; fuels arts education in our schools, which prepares students to be entrepreneurial, critical thinkers; and spurs innovation, helping industries to become more competitive in a global marketplace. The General Assembly, therefore, declares it to be the public policy of this state to encourage the development of the arts. (Ga. L. 1976, p. 748, § 1; Ga. L. 1986, p. 174, § 2; Ga. L. 2013, p. 1042, § 1/HB 338.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “The General Assembly finds that the general welfare of the people of the state will be promoted by giving recognition to the arts as a vital part of our culture and heritage; that with increasing leisure time, the practice and enjoyment of the arts are of increasing importance; and that many of our citizens lack the opportunity to view, enjoy, or participate in live theatrical performances, film making, photography, music, opera, dance, art exhibits, examples of fine architecture, and the performing and

visual arts. The General Assembly finds that many of our citizens possess talents of an artistic and creative nature which are not currently utilized to the fullest extent; that broadened activity in the arts will increase employment in the state by encouraging additional cultural activity throughout the state, thus utilizing the talents and abilities of many more citizens; and that the standards of artistic performance will be further improved by continuing encouragement and support. The General Assembly, therefore, declares it to be the public policy of this state to encourage the development of the arts.”

50-12-21. Creation of council.

There is created an arts council to be known as the “Georgia Council for the Arts,” hereinafter referred to as the council. The council is created as an advisory body. (Ga. L. 1976, p. 748, § 2; Ga. L. 1986, p. 174, § 2; Ga. L. 2013, p. 1042, § 2/HB 338.)

The 2013 amendment, effective July 1, 2013, added the second sentence.

50-12-22. Appointment of members; terms; vacancies; expenses; removal; chairperson; meetings.

(a) The council shall consist of nine members who shall be appointed by the Governor. Councilmembers shall serve two three-year terms. The Governor shall fill any vacancies for unexpired terms. In addition to the nine members appointed by the Governor pursuant to this subsection, the Governor shall appoint two ex officio members from the General Assembly.

(b) With regards to the composition of the council:

(1) The council shall be broadly representative of the major fields of the arts and related creative industries;

(2) The council should be a balanced representation of the entire state, accounting for, but not limited to, minority and ethnic groups, gender diversity, geographic diversity, large and small organizations, and the public and private sectors;

(3) Councilmembers shall be appointed from among private citizens who are widely known for their competence and experience in connection with the arts and related creative industries, as well as their knowledge of community and state interests; and

(4) Consideration shall be given to recommendations for membership made by persons or organizations involved in civic, educational, business, labor, professional, cultural, ethnic, and performing and creative arts fields, as well as those with knowledge of community and state interests.

(c) Members shall be entitled to reimbursement for expenses incurred in the work of the council when authorized in advance by the commissioner of economic development.

(d) Active and continuing participation by members of the council is needed. Any member who fails to attend three regularly scheduled, consecutive meetings may be removed by the council.

(e) A chairperson shall be appointed annually by the Governor for a term ending on June 30 of the year following such appointment. The chairperson shall be a person widely recognized for his or her knowledge, experience, and interest in the arts industry, as well as his or her knowledge of community and state interests.

(f) The council shall meet upon the call of the chairperson, but not less often than twice during each fiscal year. A majority of the members appointed to the council shall constitute a quorum. (Ga. L. 1976, p. 748, § 3; Ga. L. 1979, p. 388, § 1; Ga. L. 1986, p. 174, § 2; Ga. L. 1990, p. 1903, § 12; Ga. L. 2011, p. 514, § 1/HB 264; Ga. L. 2013, p. 1042, § 3/HB 338.)

The 2011 amendment, effective July 1, 2011, substituted “commissioner of economic development” for “director of the Office of Planning and Budget” at the end of subsection (b).

The 2013 amendment, effective July 1, 2013, substituted the present provisions of subsection (a) for the former provisions, which read: “The council shall consist of two members from each con-

gressional district and four members representing the state at large who shall be appointed by the Governor. All members shall have demonstrated an interest in the arts. Except for certain members who were appointed in 1979, the term of office of each member shall be three years. In 1979, eight members were appointed for terms of office of one year, eight members for terms of two years, and eight members

for terms of three years. The initial appointments were made so that no more than one member from each congressional district or two state-at-large members' terms of office would expire in any one year. Vacancies shall be filled for unexpired terms in the same manner as the original appointment. Membership on the council shall be limited to two successive three-year terms, and a member may be reappointed after a lapse of one year. No member initially appointed to one-year or two-year terms of office shall be prohibited

from serving two consecutive three-year terms of office.”; added subsection (b); redesignated former subsections (b) through (e) as present subsections (c) through (f), respectively; in subsection (e), substituted “chairperson” for “chairman” in the first sentence and added the second sentence; and substituted the present provisions of subsection (f) for the former provisions, which read: “The council shall meet annually, or more often, on the call of the chairman.”

50-12-23. Powers and duties generally.

The council shall advise the Governor through the Department of Economic Development concerning methods and programs to:

- (1) Stimulate and encourage the study and development of the arts as well as public interest and participation therein;
- (2) Encourage public interest in the cultural heritage of this state;
- (3) Expand this state’s cultural resources;
- (4) Encourage and assist freedom of artistic expression essential for the well-being of the arts;
- (5) Assist the communities and organizations within this state in originating and creating their own cultural and artistic programs;
- (6) Advance the arts in education, tourism, community development, and economic development in Georgia;
- (7) Assist local governments and communities within this state to plan, build, and connect the arts to their tourism, community, and economic development initiatives;
- (8) Establish standards and procedures and advisory committees as necessary to support the director and staff in furthering the objectives of the council’s programs; and
- (9) Seek and receive the views of all levels of government and the private and nonprofit sectors with respect to state programs and policies for the promotion and assistance of the arts industry. (Ga. L. 1976, p. 748, § 4; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 2/HB 264; Ga. L. 2013, p. 1042, § 4/HB 338.)

The 2011 amendment, effective July 1, 2011, substituted “this state” for “the state” in paragraphs (2), (5), and (6); substituted “Department of Economic Development” for “Office of Planning and Bud-

get” in the introductory paragraph; substituted “this state’s” for “the state’s” in paragraph (3); and inserted a comma following “activities” in paragraph (6).

The 2013 amendment, effective July

1, 2013, deleted “and” at the end of paragraph (5); substituted the present provisions of paragraph (6) for the former provisions, which read: “Survey public and private institutions engaged within this state in cultural activities, including, but not limited to, architecture, dance, folk

arts and applied arts and crafts, literature, music, painting, photography, sculpture, and theater.”; and added paragraphs (7) through (9).

Cross references. — Art in state buildings, duties of Georgia Council for the Arts, § 8-5-5.

50-12-24. Annual report.

The council shall submit an annual report to the Governor and to the commissioner of economic development concerning the appropriate methods to encourage participation in and appreciation of the arts in order to meet the legitimate needs and aspirations of persons in all parts of this state. (Ga. L. 1976, p. 748, § 5; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 3/HB 264.)

The 2011 amendment, effective July 1, 2011, in this Code section, inserted “and to the commissioner of economic development” near the middle, and substituted “this state” for “the state” at the end.

Cross references. — Annual report on art in state buildings, § 8-5-8.

50-12-25. Powers and authority of Department of Economic Development as to council.

The Department of Economic Development shall have the powers and authority necessary to carry out the purposes established by this article, including, but not limited to, the powers:

(1) To establish overall policy for grant awards, evaluations, and programs recommended by the council;

(2) To hold hearings, make and sign any agreements, and do and perform any acts which may be necessary, desirable, or proper to carry out the purposes of this article;

(3) To request from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties;

(4) To accept, on behalf of the state, any federal funds granted by act of Congress or by executive order for all or any of the purposes of this article; and, upon appropriation by the General Assembly, to expend such funds for the purposes set forth in the appropriations Act;

(5) To accept any grants, gifts, donations, or bequests for all or any of the purposes of this article;

(6) To propose methods to encourage private initiative in the arts; and

(7) To advise and consult with the Governor; the General Assembly; national foundations; and other local, state, and federal departments and agencies on methods to coordinate and assist existing resources and facilities, with the purpose of fostering artistic and cultural endeavors generally. (Ga. L. 1976, p. 748, § 6; Ga. L. 1986, p. 174, § 2; Ga. L. 1992, p. 6, § 50; Ga. L. 2011, p. 514, § 4/HB 264.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Economic Development” for “Office of Planning and Budget” in the introductory paragraph.

Law reviews. — For article, “Administrative Law,” see 63 Mercer L. Rev. 47 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Salary and expense information of nonprofit contractors receiving “arts grants” funds through the Office of Planning and Budget based upon the recom-

mendation of the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att’y Gen. No. 95-31.

50-12-26. Appointment of personnel for council.

The commissioner of economic development shall select and appoint such personnel as the commissioner shall determine to be necessary to support the council and the programs undertaken pursuant to this article. (Ga. L. 1976, p. 748, § 7; Ga. L. 1986, p. 174, § 2; Ga. L. 2011, p. 514, § 5/HB 264.)

The 2011 amendment, effective July 1, 2011, in this Code section, substituted “commissioner of economic development” for “director of the Office of Planning and

Budget” at the beginning, and substituted “commissioner” for “director” in the middle.

PART 2

GEORGIA ARTS ALLIANCE

50-12-30. Legislative findings.

The General Assembly finds that:

- (1) Tourism is Georgia’s second largest industry and cultural heritage tourism is the fastest growing industry segment;
- (2) The arts surpass professional sports in attendance and are ranked as one of the top ten reasons for corporate relocations;
- (3) The arts preserve history and heritage for Georgians;
- (4) The arts enhance education success for our children through the teaching of complex and abstract ideas; the nurturing of the

development of cognitive, social, and personal competencies; and the reaching of otherwise unreachable students;

(5) Preparing Georgia children for success in our competitive global economy that increasingly demands creative solutions to challenging problems is a fundamental obligation of the State of Georgia;

(6) Utilizing all available tools to improve Georgia's public schools is critical to demonstrating Georgia's strong commitment to work force readiness and to encouraging continued job growth and relocation of attractive knowledge based industries within Georgia;

(7) Research studies and experience in recent years demonstrate that the presence of arts in education, whether part of the curriculum or as supplemental programs, can increase students' engagement in learning as well as their social and civic development;

(8) Integrating arts in education in various ways as a meaningful part of the K-12 school environment can have the following benefits:

(A) Reaching and increasing the performance of students who often struggle to succeed in school, including disadvantaged students, English language learners, and students with disabilities;

(B) Providing new challenges for those students already considered successful;

(C) Improving the cognitive skills of students involved in reading, language development, and mathematics;

(D) Lead to a student's development of problem solving and critical and creative thinking skills;

(E) Motivating students to learn and become more involved in their schools;

(F) Increasing student attendance and engagement and lowering drop out rates; and

(G) Promoting student self-confidence and fostering better relationships among students and teachers;

(9) Public funding support for the arts and the teaching and physical infrastructure needed to provide arts and arts in education is an essential part of Georgia's efforts to improve education and provide for economic development and tourism;

(10) Companies desire employees who can meet the challenges of a global economy and can apply creative thought to problem solving;

(11) The arts build communities and increase the quality of life for Georgians;

(12) Increasing the availability of the arts and tourism is a direct economic benefit for the economy of Georgia and will provide jobs and opportunities for our citizens;

(13) It is in the best interests of this state and its citizens to support the arts, education, economic development, and tourism; and

(14) The success and significant advances made by the Georgia Research Alliance as a public-private partnership in higher education demonstrates that a coordinated public-private partnership to focus resources on critical educational objectives is an efficient and flexible means for allocating resources and ensuring measurable results. (Code 1981, § 50-12-30, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

50-12-31. Creation of Georgia Arts Alliance; purpose; governing organization; appointment of members of board of trustees; terms; advisory committee.

(a) In order to foster a public-private partnership for the support of the arts, education, economic development, and tourism in this state, there is created the Georgia Arts Alliance. Such alliance shall be for the purpose of receiving and distributing funds for the support of the arts, including the Georgia Council for the Arts, and the teaching and physical infrastructure needed to provide arts and arts in education in order to improve education and provide for economic development and tourism. The Georgia Arts Alliance shall not be an entity or agency of government, but shall be a private entity operating under and in accordance with the laws of this state. It is the intent of the General Assembly that such private entity take all necessary steps to become a Section 501(c)(3) entity under the Internal Revenue Code.

(b)(1) The Georgia Arts Alliance shall be governed by a board of trustees consisting of ten members. The members of the board shall include the State School Superintendent, the commissioner of economic development, the Executive Director of the Georgia Council of the Arts, and seven members appointed by the Governor, Lieutenant Governor, and Speaker of the House as follows: the Governor shall appoint five members, one of whom may be the head of a not for profit arts organization with an annual budget of more than \$10 million, one of whom may be the head of a not for profit organization with a budget of less than \$10 million, one of whom may be the chief executive officer of a for profit company with more than 1,000 employees, one of whom may be the chief executive officer of a for profit company with less than 1,000 employees, and one of whom is a

representative of a private charitable foundation; the Lieutenant Governor shall select one member who may be the head of a school district with more than 25,000 students; and the Speaker of the House shall select one member who may be the head of a school district with less than 25,000 students.

(2) The Governor shall appoint one member to serve as chairperson of the board of trustees. The board may elect such other officers as the board deems appropriate. The board shall meet at the call of the chairperson or the request of any three members.

(c) The members of the board of trustees shall serve terms of four years and until their successors are appointed and qualified; provided, however, that the initial terms of the head of a not for profit arts organization with an annual budget of more than \$10 million, the head of a school district with more than 25,000 students, and the chief executive officer of a for profit company with fewer than 1,000 employees in Georgia shall be for two years and until their successors are appointed and qualified. Thereafter, such members shall serve four-year terms and until their successors are appointed and qualified. The members of the board shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred while on the business of the alliance.

(d) The board of trustees shall appoint an advisory committee to assist the board members in their duties. Such advisory committee shall consist of not more than 30 members and shall be chaired by the executive director of the alliance. The advisory committee shall include at least two representatives from each of the state's congressional districts. In making its appointments, the board shall select members of the boards of arts, education, economic development, and tourism organizations; persons who have shown a commitment to the arts in their communities; and persons who understand the needs of business, education, and the arts and tourism industries. Such members shall serve for four-year terms and until their successors are selected and qualified; provided, however, that the board of trustees shall designate 15 of the initial appointees to serve terms of two years and until their successors are selected and qualified. Such 15 members shall thereafter serve four-year terms and until their successors are selected and qualified. The members of the advisory committee shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred while on the business of the advisory committee. (Code 1981, § 50-12-31, enacted by Ga. L. 2008, p. 614, § 1/HB 291; Ga. L. 2009, p. 8, § 50/SB 46.)

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (a) of this Code section, is codified as 26 U.S.C. § 501(c)(3).

50-12-32. Purposes.

The Georgia Arts Alliance may have the following purposes:

- (1) To support the efforts of the Georgia Council for the Arts in the advancement of the arts and tourism industries of this state;
- (2) To support through the arts and arts education the efforts of the Georgia Department of Economic Development;
- (3) To support the improvement of public education in Georgia through the integration of the arts in education and to ensure that the benefits of arts education are competitively available to all schools;
- (4) To provide annually to individual public schools enabling matching grants for up to three years for a specified arts program or project for students based on competitive evaluation by the advisory board or a committee of the advisory board of the various proposals;
- (5) To provide annually to the Georgia Council for the Arts an incremental addition to the council's funding from other sources to support professional development of teachers, teaching artists, and administrators for arts in education through learning grants to individuals; and to support employment of an art education specialist in both the Georgia Council for the Arts and the Department of Education;
- (6) To partner with a Learning Center for Excellence in the Arts serving all of Georgia which is owned or operated by an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is part of a Music Center of Excellence serving all of Georgia and has an infrastructure in place to support at least 50,000 students in kindergarten through grade 12;
- (7) To receive, invest, and administer funds received, including without limitation funds from the state, the federal government, private donations, grants, and other sources to fulfill the purposes for which the alliance is created;
- (8) To attract contributions and grants for the purposes of the alliance;
- (9) To utilize funds of the alliance for matching dollars for federal and foundation grants to fulfill the purposes of the alliance; and
- (10) To engage in other activities designed to support Georgia's arts and the teaching and physical infrastructure needed to provide arts and arts in education in order to improve education and provide for economic development and tourism. (Code 1981, § 50-12-32, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (6) of this Code section, is codified as 26 U.S.C. § 501(c)(3).

50-12-33. Duties and responsibilities of board of trustees.

The board of trustees shall have the following duties and responsibilities:

(1) To operate and manage the Georgia Arts Alliance, including the investment and reinvestment of the alliance's funds, the management of assets of the alliance, and the distribution of such funds and assets to fulfill the purpose of the alliance;

(2) To enter into contracts with public and private entities for services needed by the alliance and to fulfill the purposes of the alliance;

(3) To employ such staff and consultants as deemed necessary to fulfill the purposes of the alliance and to manage, invest, and administer funds and assets of the alliance;

(4) To receive, retain, and invest donations, state and federal funding, grants, and other funds and assets;

(5) To ensure that an annual independent audit is conducted of all funds and assets of the alliance;

(6) To apply for and administer grants from public and private entities to fulfill the purposes of the alliance, to assist Georgia arts organizations in obtaining and administering grants for these purposes, and to partner with other organizations in order to obtain such grants;

(7) To institute and administer grant programs for Georgia arts organizations and programs to fulfill the purposes of the alliance;

(8) To ensure that determinations of any public funding recipients shall be based not on political expediency but rather on the project's contribution to the general welfare of its intended audience and the project's demonstration of its relative ability to provide benefits to the state and its citizens as quantified as required by paragraph (10) of this Code section;

(9) To promote, fund, conduct, and assist in the development, provision, and expansion of arts education programs in Georgia and the teaching and physical infrastructure needed to provide arts and arts in education;

(10) To develop a measurement consistent with state or national standards that will ensure that information provided by the alliance in any report to the Governor and the General Assembly concerning

the impact of the arts on education, economic development, and tourism have verifiable metrics in order to aid the General Assembly in determining whether any public money expended in support of the arts provides quantifiable benefits to the state and its citizens; and

(11) To perform such other tasks as may be appropriate to fulfill its purposes not inconsistent with law. (Code 1981, § 50-12-33, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a semicolon was substituted for a period at the end of paragraph (8).

50-12-34. Independent audit; reporting.

(a) The funds and assets of the alliance shall be independently audited annually, and the results of such audit shall be open to inspection at reasonable times by any person. A copy of the audit report shall be sent to the state auditor and the state accounting officer.

(b) The alliance shall provide the Governor and the members of the General Assembly with a full report of its activities and funds distribution in December of each year with recommendations, if any, for legislation to assist the alliance in achieving its purposes. The report shall include information on the impact of the arts on education, economic development, and tourism, specifying the metric results using the measurement system developed by the alliance as required in paragraph (10) of Code Section 50-12-33. (Code 1981, § 50-12-34, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

50-12-35. Recommendations to Governor and General Assembly.

The Georgia Arts Alliance may from time to time make written recommendations to the Governor and the General Assembly for strengthening of the arts in Georgia. The recommendations may include, but not be limited to, the following:

(1) Strategies for promoting, both within Georgia and beyond, cultural tourism for all areas of the state; and

(2) Recommendations regarding the use of arts in education and instruction in arts in the public schools. (Code 1981, § 50-12-35, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

ARTICLE 3

GEORGIA STATE GAMES COMMISSION

Editor's notes. — Ga. L. 1989, p. 1786, § 1, effective July 1, 1989, repealed the Code sections formerly codified at Article 3 and enacted the current article. The

former article consisted of Code Sections 50-12-40 through 50-12-46, relating to the State Commission on Physical Fitness, and was based on Ga. L. 1978, p. 814, §§ 1 through 7.

50-12-40. Definitions.

As used in this article, the term:

(1) "Direct-support organization" means a Georgia nonprofit corporation organized and operated to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Georgia State Games, Olympic training facilities, and the promotion of national and international amateur sports competition.

(2) "Physical fitness" means good or improved habits relating to recreation, exercises, sports, and the use of leisure time and instructions for these purposes and for improving the physique and health of the residents of the state. (Code 1981, § 50-12-40, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-41. Creation of Georgia State Games Commission; purpose; administration.

(a) There is created a Georgia State Games Commission, hereafter called the commission, for the purpose of protecting and improving the physical fitness of the residents of the state.

(b) The commission is assigned to the Department of Natural Resources for administrative purposes only, as specified in Code Section 50-4-3. (Code 1981, § 50-12-41, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1990, p. 1146, § 1.)

50-12-42. Purpose of article.

The purpose of this article is:

(1) To promote the health and physical fitness of the citizens of this state;

(2) To promote participation in amateur sports by citizens of all ages and skill levels;

(3) To promote a state-wide program of amateur athletic competition, culminating in state championship competitions; and

(4) To promote state, national, and international amateur sports through the establishment of Olympic training facilities within the state. (Code 1981, § 50-12-42, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-43. Membership of commission; term of office; chairman; meetings; quorum; rules; vacancies.

(a) The commission shall consist of members to be appointed as follows:

(1) The Governor shall appoint one member from each congressional district in this state;

(2) The President of the Senate shall appoint two members from the state at large; and

(3) The Speaker of the House of Representatives shall appoint two members from the state at large.

(b) The members shall be selected because of their experience and interest in physical fitness and amateur athletics and shall share a commitment to promote amateur athletics in the state. The terms of the 12 members of the commission who were in office on January 1, 1991, shall expire on December 31, 1993. As soon as legally permissible after January 1, 1991, the President of the Senate and the Speaker of the House of Representatives shall each appoint one additional member to the commission for initial terms expiring on December 31, 1993. In the event the number of members of the United States House of Representatives from Georgia is increased following the United States decennial census of 1990, the Governor shall appoint an appropriate number of additional members to the commission and such members shall have initial terms expiring on December 31, 1993. Successors to members whose terms expire on December 31, 1993, shall be appointed for initial terms as follows:

(1) Members appointed by the Governor from odd-numbered congressional districts, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives shall have initial terms beginning on January 1, 1994, and ending December 31, 1995; and

(2) Members appointed by the Governor from even-numbered congressional districts, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives shall have initial terms beginning on January 1, 1994, and ending December 31, 1997.

Successors to such members and future successors shall be appointed immediately prior to the expiration of a term of office, shall take office on January 1 following their appointment, and shall have terms of office of four years each and until their respective successors are appointed. Members shall be eligible for reappointment for an unlimited number of terms.

(c) Members shall elect a chairman who shall be a member of the commission. The commission shall meet regularly at the call of the Governor or the chairman. A majority of the total number of members to which the commission is entitled shall constitute a quorum. The commission shall adopt such rules and regulations as are necessary and proper to govern its procedure and business.

(d) In the event of the death, disability, resignation, removal, or refusal to serve of any member, the appointing official of that member shall appoint a qualified person to fill the unexpired term.

(e) Each member of the commission shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of the commission, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance. (Code 1981, § 50-12-43, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, commas were inserted following “Senate” in paragraphs (b)(1) and (b)(2).

50-12-44. Promotion of physical fitness and sports.

The commission shall have the following powers and duties in addition to other powers and duties set forth in this article:

(1) To develop and stage a program of state-wide amateur athletic competitions to be known as the “Georgia State Games”;

(2) To enter into contracts with both public and private parties in connection with the exercise of powers and duties of the commission;

(3) To procure insurance coverage for participants in its programs;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff;

(5) To enlist the support of individuals, civic groups, amateur and professional sports associations, and other organizations in promoting, conducting, and staging the Georgia State Games and in promoting and improving physical fitness in amateur sports programs;

(6) To enter into agreements for the development, marketing, promotion, staging, and television and radio broadcasting or reproduction of:

(A) The Georgia State Games; and

(B) The official Georgia State Games emblem, posters, and any other artistic, orthographic, or visual representations or designations relating to the Georgia State Games;

(7) To accept monetary grants, gifts, and proceeds arising from any contracts of the commission from the federal government; state government; any county, municipality, or local government; any board, bureau, commission, agency, authority, or establishment of any such government; or any individual, group of individuals, or any other organization, public or private; and to hold, invest, and disburse such grants, gifts, and proceeds and the income derived from the grants, gifts, and proceeds in carrying out the objectives and purposes of the commission;

(8) To accept from the federal government or any instrumentality thereof or any other public or private person, firm, or corporation in the name of and for the state services, equipment, supplies, and materials by way of gift or grant for any purpose provided by this article;

(9) To promote the development of Olympic training centers within the state. Such centers shall be managed by a Georgia State Games and Olympic training centers direct-support organization under contract with the Department of Natural Resources as further provided in Code Section 50-12-45. The commission shall assure that state and local governmental entities and other entities cooperate to the extent feasible in providing existing facilities for use in Olympic training;

(10) To promote national and international amateur athletic competitions;

(11) To recommend rules for adoption and establish policies for the operation of the Georgia State Games, the promotion of national and international amateur athletic competitions, and the development of Olympic training centers;

(12) To maintain liaison with the Department of Education, county and independent boards of education, private and parochial schools, physical fitness commissions of the several political subdivisions of the state, and comparable agencies of other states or of the federal government;

(13) To sponsor physical fitness and amateur sports workshops, clinics, conferences, and other similar activities;

(14) To give recognition to outstanding developments and achievements in, and contributions to, physical fitness and amateur sports;

(15) To collect and disseminate physical fitness and sports information and initiate advertising campaigns promoting physical fitness and amateur sports;

(16) To encourage local governments and communities to develop local physical fitness programs and amateur athletic competition; and

(17) To adopt, alter, or repeal its bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the commission may deem necessary or expedient in facilitating its business. (Code 1981, § 50-12-44, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “and” was inserted preceding “television” in the introductory language of paragraph (6).

OPINIONS OF THE ATTORNEY GENERAL

Power of the commission to procure insurance coverage for participants does not include the authority to procure insurance for sponsors. 1995 Op. Att’y Gen. No. 95-32.

50-12-45. Assistance by direct-support organization; contract with organization; pattern and design of games; frequency and sites; subsidiary corporations.

(a) The commission may authorize a direct-support organization as defined by Code Section 50-12-40 to assist the operation of the Georgia State Games, the promotion of national and international amateur athletic competitions, and the development of Olympic training centers. The direct-support organization shall operate under contract with the Department of Natural Resources.

(b) The contract between the direct-support organization and the Department of Natural Resources shall, at a minimum, provide for:

(1) Approval of the articles of incorporation of the direct-support organization by the commission, and for the governance of the direct-support organization by members appointed by the commission and approved by the Governor;

(2) Submission of an annual budget for the approval of the commission and the Governor. The budget shall be in accordance with rules adopted by the commission;

(3) Certification by the Governor or his designee, after conducting an annual financial and performance review, that the direct-support organization is operating in compliance with the terms of the contract and in a manner consistent with the goals of the commission and in the best interest of the state. Such certification shall be made to the commission annually and reported in the official minutes of a meeting of the commission;

(4) The release and conditions for the expenditure of any state revenues;

(5) The reversion to the state of funds held in trust by the direct-support organization if the contract is terminated; and

(6) The fiscal year of the direct-support organization as beginning on July 1 and ending June 30 in each and every year.

(c) The Georgia State Games shall be patterned after the Summer Olympic games with variations as necessitated by the availability of facilities, equipment, and expertise. The games shall be designed to encourage the participation of athletes representing a broad range of age groups, skill levels, and Georgia communities. Participants shall be residents of this state. Regional competitions shall be held throughout the state, and the top qualifiers in each sport shall proceed to the final competitions to be held at a site in the state having the necessary facilities and equipment for conducting the competitions.

(d) The commission shall determine the frequency of the Georgia State Games and shall select the sites of the final competition and regional competitions.

(e) The commission is authorized to incorporate one or more non-profit corporations as subsidiary corporations of the commission for the purpose of carrying out any of the powers of the commission and to accomplish any of the purposes of the commission. Any subsidiary corporations created pursuant to this subsection shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the commission, any assets shall revert to the commission or to any successor to the commission or, failing such succession, to the State of Georgia. (Code 1981, § 50-12-45, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 3; Ga. L. 1996, p. 1104, § 1.)

50-12-46. Authority of Governor to permit use of property, facilities, and services by direct-support organization.

The Governor is authorized to permit the use of property, facilities, and personal services of or at any university system facility or institution by any Georgia State Games and Olympic training centers direct-support organization, subject to the provisions of this Code section. For the purposes of this Code section, personal services includes full-time or part-time personnel as well as payroll processing. (Code 1981, § 50-12-46, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-47. Audit of Georgia State Games direct-support organization.

The Georgia State Games direct-support organization shall make provisions for an annual financial and compliance audit of its financial

accounts and records by an independent certified public accountant in accordance with rules established by the commission. The annual audit report shall be submitted to the Governor and the commission for review and approval. Upon approval, the Governor and the commission shall certify the audit report to the Department of Audits and Accounts for review and approval. (Code 1981, § 50-12-47, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-48. Annual report of commission; budget.

The commission shall make an annual report of its activities to the Governor and to the General Assembly, with any recommendations which it may wish to make. The commission shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 50-12-48, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 4; Ga. L. 2005, p. 1036, § 45/SB 49.)

ARTICLE 4

HALLS OF FAME

PART 1

GEORGIA SPORTS HALL OF FAME

Editor's notes. — This part consisted of Code Sections 50-12-60 through 50-12-63.1, relating to the Georgia Sports Hall of Fame Board, and was based on Ga. L. 1978, p. 2306, §§ 1 - 4; Ga. L. 1982, p. 1153, § 1; Ga. L. 1993, p. 1731, § 1; Ga. L. 1994, p. 587, § 1.

50-12-60 through 50-12-63.1.

Reserved. Repealed by Ga. L. 1998, p. 214, § 1, effective May 1, 1998.

PART 2

GEORGIA GOLF HALL OF FAME

50-12-64 through 50-12-69.1.

Reserved. Repealed by Ga. L. 2010, p. 753, § 3/HB 449, effective June 2, 2010.

Editor's notes. — This part was based on Ga. L. 1982, p. 1153, § 1; Ga. L. 1983, p. 3, § 39; Ga. L. 1994, p. 309, § 1; Ga. L. 1996, p. 353, § 1; Ga. L. 2005, p. 306, § 6/SB 125; Ga. L. 2009, p. 745, § 1/SB 97. Ga. L. 2010, p. 753, § 4/HB 449, not codified by the General Assembly, pro--

vides: "The state, acting by and through its State Properties Commission, shall be authorized to sell by competitive bid all real property owned or controlled by the Georgia Golf Hall of Fame or its authority or board for a consideration of not less than the fair market value as determined by the State Properties Commission and

not less than the amount of the outstanding bond indebtedness associated with the Georgia Golf Hall of Fame. Such sale shall be as provided in Code Section 50-16-39. Such authorization shall expire three years after the effective date of this Act." This Act became effective June 2, 2010.

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

Editor's notes. — Ga. L. 1991, p. 1773, § 2, effective July 1, 1991, designated Code Sections 50-12-70 through 50-12-74 as Subpart 1.

50-12-70. Creation of Aviation Hall of Fame; board assigned to Department of Economic Development.

(a) There is created the Georgia Aviation Hall of Fame which shall be governed by the Georgia Aviation Hall of Fame Board.

(b) The board is assigned to the Department of Economic Development for administrative purposes only, as specified in Code Section 50-4-3. (Code 1981, § 50-12-70, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2005, p. 306, § 7/SB 125.)

50-12-71. Appointment, terms, and expenses of board members.

(a) The board shall be composed of 17 members to be appointed as follows:

(1) Sixteen members shall be appointed by the Governor, five members for initial terms of two years; five members for initial terms of three years; four members for initial terms of four years; and two members provided for in 1991 for initial terms of five years. Seven of the members appointed by the Governor may reside in any area of the state. Of the remaining nine members appointed by the Governor, one member shall reside in and be appointed from each of the nine districts provided in subsection (b) of this Code section. Successors to such members shall be appointed by the Governor for terms of six years; and

(2) One member shall be appointed by the Commander of the Warner Robins Air Logistics Center at Robins Air Force Base in Houston County, Georgia, for an initial term of four years, and

successors shall be appointed by the Governor for terms of six years. This member may reside in any area of the state.

(b) For the purpose of appointing nine members of the board, the state shall be divided into nine districts based upon the ZIP Code areas as designated by the United States Postal Service and as such areas exist on January 1, 1989. The nine districts shall be composed as follows:

District 1:

ZIP Code Areas 305 and 307;

District 2:

ZIP Code Area 306;

District 3:

ZIP Code Areas 300, 301, 302, and 303;

District 4:

ZIP Code Areas 304, 308, and 309;

District 5:

ZIP Code Areas 310 and 312;

District 6:

ZIP Code Areas 318 and 319;

District 7:

ZIP Code Area 317;

District 8:

ZIP Code Area 316; and

District 9:

ZIP Code Areas 313, 314, and 315.

(c) Of the 17 members of the board, at least 11 members shall have experience in and be representative of the aviation industry or profession. Initial appointments shall be made prior to July 1, 1989, except that the additional members provided for in 1991 shall be appointed prior to October 1, 1991. In the event a vacancy occurs in the membership of the board, the Governor shall promptly fill the same for the unexpired term. A majority of the members shall constitute a quorum for the transaction of business.

(d) The board shall elect a chairperson, a vice-chairperson, and such other officers as it deems advisable from its own membership. The

members shall receive no compensation for their services but shall be reimbursed for expenses incurred in attending meetings of the board. The board is authorized to employ such personnel as it deems necessary to enable it to carry out its duties and functions; however, such employees may not be subject to the state system of personnel administration provided for in Chapter 20 of Title 45. The board shall meet once each quarter and at such other times as the board deems necessary but not more than eight times annually. (Code 1981, § 50-12-71, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 1991, p. 1773, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-104/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (d), substituted “chairperson, a vice-chairperson” for “chairman, a vice-chairman” in the first sentence, and substituted “state system of personnel administration provided for in Chapter 20 of Title 45” for “State Personnel Administration of employment and employment administration” in the third sentence.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

50-12-72. Purpose and function of board.

(a) It shall be the main purpose and function of the board to promote and encourage the growth and public support of aviation within the state by honoring those, living or dead, who by extraordinary achievement or service have made outstanding and lasting contributions to aviation in Georgia. Persons eligible for recognition in the Georgia Aviation Hall of Fame shall include residents of the state whose achievements in or contributions to aviation occurred within or outside the state and nonresidents whose achievements in or contributions to aviation occurred within the state. The board is authorized to conduct surveys and polls and to appoint committees to assist it in performing its purpose and function.

(b) Without limiting the generality of subsection (a) of this Code section, it is specifically further provided that the board shall be authorized to establish a library and a research archive program for purposes of education and research in the fields of aviation, aviation history, and related areas. The board shall be authorized to receive, catalog, and maintain documents, books, pictures, and other items for such purposes. (Code 1981, § 50-12-72, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2000, p. 841, § 1.)

50-12-72.1. Powers granted to board.

The Georgia Aviation Hall of Fame Board shall, in furtherance of its purposes and in addition to other powers granted to the board by law, have those powers generally granted by law to state authorities, including specifically, without limitation, the power to acquire, improve, and hold real and personal property and the power to contract with other governmental authorities, departments, and agencies and private entities for such purposes. (Code 1981, § 50-12-72.1, enacted by Ga. L. 2002, p. 820, § 2.)

Cross references. — Aviation, T. 6.

50-12-73. Headquarters; halls, rooms, quarters, and offices; designation of facilities as part of hall of fame; official repository for aviation history.

(a) With the approval of the federal government, the Georgia Aviation Hall of Fame shall be located in the Museum of Aviation at Robins Air Force Base in Houston County, Georgia. The headquarters of the board shall be located in Houston County, Georgia. The board may obtain such halls, rooms, quarters, and offices as it deems necessary for conducting its affairs. The board is authorized to recognize and designate any existing or proposed facility as a part of the hall of fame as may be appropriate.

(b) The Georgia Aviation Hall of Fame is designated as and shall be known as the Official State of Georgia Repository for Aviation History. (Code 1981, § 50-12-73, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2000, p. 841, § 2.)

50-12-74. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.

(a) The board is authorized to solicit and accept donations, contributions, and gifts of money and property to enable it to carry out its function and purpose. The donations, contributions, and gifts shall be exempt from all taxation in this state. The General Assembly is authorized to appropriate funds to the board.

(b) The board is authorized to make such contracts, leases, or agreements as may be necessary and convenient to carry out the duties and purposes for which the board is created. The board is authorized to enter into contracts, leases, or agreements with any person, firm, or corporation, public or private, upon such terms and for such purposes as may be deemed advisable by the board. (Code 1981, § 50-12-74, enacted by Ga. L. 1989, p. 1682, § 1.)

Subpart 2

Overview Committees

50-12-75. Designation of overview committees to review and evaluate Aviation Hall of Fame Board.

The House Economic Development and Tourism Committee and the Senate Economic Development Committee shall act and serve as overview committees of the Georgia Aviation Hall of Fame. The committees shall periodically inquire into and review the operations of the Georgia Aviation Hall of Fame, as well as periodically review and evaluate the success with which the Georgia Aviation Hall of Fame Board is accomplishing its statutory duties and functions as provided in Subpart 1 of this part. (Code 1981, § 50-12-75, enacted by Ga. L. 1991, p. 1773, § 2; Ga. L. 2009, p. 303, §§ 5, 16/HB 117.)

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and

House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

50-12-76. State agencies to provide assistance to overview committees upon request; utilization of independent services by committees.

The state auditor, the Attorney General, and all other agencies of state government, upon request by the committees, shall assist the committees in the discharge of their duties as set forth in this subpart. The committees may secure the services of independent accountants, engineers, and consultants to assist them in carrying out their duties. (Code 1981, § 50-12-76, enacted by Ga. L. 1991, p. 1773, § 2.)

50-12-77. Reports by overview committees.

The Georgia Aviation Hall of Fame Board shall cooperate with the committees, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committees, set forth in this subpart, may be timely and efficiently discharged. The board shall submit to the committees such reports and data as the committees shall reasonably require of the board in order that the committees may adequately perform their functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Aviation Hall of Fame or the Georgia Aviation Hall of Fame Board. The committees shall, on or before the first day of January of each year, and at such other times as they deem necessary, submit to the General

Assembly a report of their findings and recommendations based upon the review of the Georgia Aviation Hall of Fame, as set forth in this subpart. (Code 1981, § 50-12-77, enacted by Ga. L. 1991, p. 1773, § 2; Ga. L. 2005, p. 694, § 9/HB 293.)

50-12-78. Criteria to be utilized by committees in evaluating Aviation Hall of Fame Board.

In the discharge of their duties, the committees shall evaluate the performance of the Georgia Aviation Hall of Fame Board consistent with the following criteria:

- (1) Prudent, legal, and accountable expenditure of public funds;
- (2) Efficient operation; and
- (3) Performance of its statutory responsibilities. (Code 1981, § 50-12-78, enacted by Ga. L. 1991, p. 1773, § 2.)

50-12-79. Expenditure of funds by overview committees.

(a) The committees are authorized to expend state funds available to the committees for the discharge of their duties. Said funds may be used for the purposes of paying for services of independent accountants, engineers, and consultants, and paying all other necessary expenses incurred by the committees in performing their duties.

(b) The members of the committees shall receive the allowances authorized for legislative members of interim legislative committees.

(c) The funds necessary for the purposes of the committees shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 50-12-79, enacted by Ga. L. 1991, p. 1773, § 2.)

ARTICLE 5

GEORGIA COMMISSION ON WOMEN

Editor's notes. — Ga. L. 1992, p. 820, § 1, effective July 1, 1992, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 50-12-80 through 50-12-87, relating to the Commission on the Status of Women, and was based on Ga. L. 1966, p. 605, §§ 1-7; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 50.

50-12-80. Creation of commission; appointments to and vacancies in membership; staggered terms.

(a) There is created the Georgia Commission on Women. The commission shall be composed of 15 members to be appointed as follows:

(1) Five members shall be appointed by the Governor;

(2) Five members shall be appointed by the President of the Senate; and

(3) Five members shall be appointed by the Speaker of the House of Representatives.

(b) The members of the commission shall be women and men of recognized ability and achievement. All vacancies shall be filled for the unexpired term by the original appointing official. Except as otherwise provided in subsection (c) of this Code section, members shall serve for terms of four years and shall be eligible for successive appointments by an appointing official. Any member with four consecutive unexcused absences from regular monthly meetings may be removed from the commission by the appointing official. Each person appointed to the commission shall be a full-time resident of Georgia. Any member who ceases to be a full-time resident of this state during the term of his or her membership shall be removed from the commission and such vacancy shall be filled by the Governor.

(c) To effect staggered terms of office for members of the commission and effective with members appointed for terms beginning in 2000, the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives shall each appoint: two members for two-year terms of office; two members for three-year terms of office; and one member for a one-year term of office. Thereafter, all members shall be appointed to serve four-year terms of office. (Code 1981, § 50-12-80, enacted by Ga. L. 1992, p. 820, § 1; Ga. L. 2000, p. 1219, §§ 1, 2.)

50-12-81. Officers; quorum.

The commission shall elect a chairman, vice chairman, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission. A quorum for transacting business shall be a majority of the members of the commission. (Code 1981, § 50-12-81, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-82. Powers and duties; cooperation with other agencies.

(a) The commission shall have the following powers and duties:

(1) To determine the scope and nature of the studies and research to be undertaken by the commission, including, but not limited to:

(A) Educational needs of and opportunities for women;

(B) Social security and tax laws as they affect women;

(C) Women's health issues;

(D) Political, legal, civil, property, and social rights of women; and

(E) Employment policies in the public and private sector and their impact on the wage-earning capacity of women;

(2) To collect and disseminate information regarding the status of women in the State of Georgia and the nation;

(3) To review and analyze the laws of the State of Georgia and their impact on the lives of the women of this state;

(4) To consult with and advise the Governor, and any state department, agency, board, commission, or authority on matters pertaining to women;

(5) To cooperate with the government of the United States and the governments of other states in programs relating to women;

(6) To promote, encourage, and provide advisory assistance to state, local, and community women's professional, business, and civic organizations;

(7) To accept public or private grants, devises, and bequests; and

(8) To hold public hearings, conduct studies, or take any other action the commission deems necessary to fulfill its responsibilities.

(b) The commission shall be authorized to enter into all contracts or agreements necessary or incidental to the performance of its duties.

(c) All executive departments, agencies, boards, commissions, and authorities shall cooperate with the commission in the performance of its duties. (Code 1981, § 50-12-82, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-83. Reimbursement for expenses.

The members of the commission shall be reimbursed for expenses incurred while conducting the business of the commission from public or private grants, devises, or bequests received by the commission. (Code 1981, § 50-12-83, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-84. Annual report.

The commission shall publish in print or electronically an annual report summarizing the activities, findings, and recommendations of the commission. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and all members of the Senate and the House of Representatives not

later than November 1 of each year. (Code 1981, § 50-12-84, enacted by Ga. L. 1992, p. 820, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

50-12-85 through 50-12-87.

Repealed by Ga. L. 1996, p. 6, § 50, effective February 12, 1996.

Editor's notes. — These Code sections were based on Ga. L. 1966, p. 605, §§ 5-7.

ARTICLE 6

CONSTITUTIONAL AMENDMENTS PUBLICATION BOARD

50-12-100. Creation of board; composition; purpose; chairman; vote requirements.

There is created the Constitutional Amendments Publication Board to be composed of the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The board shall provide for the publication of proposed constitutional amendments or of a proposed new Constitution, or of both such amendments and such Constitution, pursuant to Article X, Section I, Paragraph II of the Constitution. The Governor shall be chairman of the board, which shall meet upon the call of the chairman or upon the call of any two members of the board. The chairman shall have a vote on all actions the same as the other members of the board and no action shall be taken without the affirmative vote of any two members of the board. (Ga. L. 1970, p. 640, § 1; Ga. L. 1983, p. 3, § 66.)

50-12-101. Assignment of numbers by board to proposed constitutional amendments and Constitutions; use of numbers by Secretary of State for election ballots; assignment of short titles or headings.

(a) The Constitutional Amendments Publication Board shall assign to each proposed constitutional amendment and proposed new Constitution a number, which shall be used for the purpose of publishing the amendments and the Constitution.

(b) The same number which shall be assigned by the board to each proposed amendment and new Constitution shall also be used by the Secretary of State when the Secretary of State shall determine the form of the ballot for each general election in which such proposals shall be submitted to the electors for ratification or rejection.

(c) The board shall also assign to each proposed constitutional amendment a short title or heading of no more than 15 words that shall

describe in summary form the substance of the proposal. The Secretary of State shall cause such short title or heading to be printed in boldface at the beginning of each proposed constitutional amendment that appears on the ballot. (Ga. L. 1981, p. 116, § 1; Ga. L. 2001, p. 269, § 27; Ga. L. 2002, p. 415, § 50.)

Cross references. — Manner of amending Constitution of Georgia, Ga. Const. 1983, Art. X, Sec. I. Preparation, printing and publicizing of summary of general amendments to Constitution of Georgia, § 21-1-2.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 96 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 16 Am. Jur. 2d, Constitutional Law, § 32.

C.J.S. — 16 C.J.S., Constitutional Law, § 15 et seq.

ARTICLE 7

GEORGIA HALL OF FAME COMMISSION

50-12-110 through 50-12-112.

Reserved. Repealed by Ga. L. 2001, p. 873, § 26, effective July 1, 2001.

Editor’s notes. — This article, consisting of Code Sections 50-12-110 through 50-12-112, relating to the Georgia Hall of

Fame Commission, was based on Ga. L. 1974, p. 1636.

ARTICLE 8

GEORGIA COMMISSION ON THE HOLOCAUST

50-12-130. Creation of Georgia Commission on the Holocaust.

The General Assembly finds and declares that:

- (1) During the period from 1933 through 1945, six million Jews and millions of other Europeans were murdered in Nazi concentration camps as part of a carefully orchestrated program of cultural, social, and political genocide known as the Holocaust;
- (2) All people should remember the horrible atrocities committed at that time and other times in human history as the result of bigotry and tyranny and, therefore, should continually rededicate themselves to the principles of human rights and equal protection under the laws of a democratic society;
- (3) It is desirable to educate our citizens about the events leading up to the Holocaust and about the organizations and facilities that

were created and used purposefully for the systematic destruction of human beings;

(4) Holocaust history is the proper concern of all people, particularly students enrolled in the schools, colleges, and universities of the State of Georgia;

(5) Programs, workshops, institutes, seminars, exhibits, and other teacher-training activities for the study of the Holocaust have taken place during recent years at various middle schools, high schools, colleges, and universities in this state; and

(6) It is desirable to create a permanent state commission which, as an organized body and on a continuous basis, will survey, design, encourage, and promote implementation of Holocaust education and awareness programs in Georgia and will be responsible for organizing and promoting the memorialization of the Holocaust on a regular basis throughout the state. (Code 1981, § 50-12-130, enacted by Ga. L. 1998, p. 880, § 1.)

50-12-131. Membership; terms; qualifications; officers; quorum; powers and duties.

(a) There is created the Georgia Commission on the Holocaust in the executive branch of state government. The commission shall be assigned to the Office of the Secretary of State for administrative purposes only.

(b) The commission shall be composed of the following members:

(1) Ex officio members as follows:

(A) The State School Superintendent or the Superintendent's designee;

(B) The chancellor of the University System of Georgia or the chancellor's designee;

(C) The executive director of the Georgia Public Telecommunications Commission or the executive director's designee; and

(D) The commissioner of veterans service or the commissioner's designee; and

(2) Public members as follows:

(A) Five public members appointed by the Governor;

(B) Five public members appointed by the Speaker of the House of Representatives; and

(C) Five public members appointed by the President of the Senate.

(c) The public members of the commission shall be residents of this state and shall be appointed with due regard for broad geographic representation. Such public members should include but not be limited to:

(1) Individuals who have served prominently as spokespersons for or as leaders of organizations or corporations which serve members of religious, ethnic, national heritage, or social groups which were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence, and other forms of human rights violations and persecution at the hands of the Nazis and their collaborators during the Nazi era;

(2) Individuals who are experienced in the field of Holocaust education;

(3) Individuals who represent liberators of victims of the Holocaust; or

(4) Lay persons who have an interest in Holocaust education.

(d) Public members of the commission shall be appointed for terms of five years each and until their respective successors are appointed and qualified. Public members shall be eligible for reappointment. The office of any member of the commission who fails to attend more than two consecutive meetings of the commission without an excuse approved by a resolution of the commission shall become vacant. All vacancies shall be filled by appointment in the same manner as the original appointment, and the person so appointed to fill a vacancy shall serve for the remainder of the unexpired term.

(e) The commission shall have a chairperson who shall be appointed by the Governor for a term of five years and until his or her successor is appointed and qualified.

(f) Seven members of the commission shall constitute a quorum for the transaction of the business of the commission. Public members shall have the right to vote on any matter before the commission, but ex officio members and their designees shall not have the right to vote.

(g) The Speaker of the House of Representatives shall appoint a member of the House of Representatives and the President of the Senate shall appoint a member of the Senate to serve as advisers to the commission. (Code 1981, § 50-12-131, enacted by Ga. L. 1998, p. 880, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2007, p. 47, § 50/SB 103.)

50-12-132. Annual reports; vacancies; advisory committees and advisors.

The commission shall:

(1) Provide, based upon the collective knowledge and experience of its members, assistance and advice to public and private schools, colleges, and universities with respect to the implementation of Holocaust education and awareness programs;

(2) Meet with appropriate education officials and other interested public and private organizations, including service organizations, for the purpose of providing information, planning, coordination, or modification of courses of study or programs dealing with the subject of the Holocaust;

(3) Survey and catalogue the extent of Holocaust and genocide education presently being incorporated into the curricula and taught in the educational system of this state;

(4) Inventory those Holocaust memorials, exhibits, and resources which could be incorporated into courses of study or programs at various locations and other educational agencies for the development and implementation of Holocaust and genocide education programs. In furtherance of this responsibility, the commission shall be authorized to contact and cooperate with existing Holocaust and genocide public or private nonprofit resource organizations and may act as a liaison concerning Holocaust and genocide education to members of the United States Senate and House of Representatives, the Georgia Senate and House of Representatives, the United States Holocaust Memorial Museum, and other national and international Holocaust agencies;

(5) Compile a roster of individual volunteers who are willing to share their verifiable knowledge and experiences in classrooms, seminars, and workshops on the subject of the Holocaust. Such volunteers may be survivors of the Holocaust, liberators of concentration camps, scholars, members of the clergy, community relations professionals, and other persons who, by virtue of their experience, education, or interest, have experience with the Holocaust;

(6) Coordinate events memorializing the Holocaust and seek volunteers who are willing and able to participate in commemorative events that will enhance public awareness of the significance of the Holocaust;

(7) Prepare reports for the Governor and the General Assembly regarding its findings and recommendations to facilitate the inclusion of Holocaust studies and special programs memorializing the Holocaust in educational systems in this state; and

(8) Appoint advisory committees to advise the commission on the fulfillment of its duties. (Code 1981, § 50-12-132, enacted by Ga. L. 1998, p. 880, § 1.)

50-12-133. Commission authorized to solicit donations.

The commission is authorized to solicit and accept donations, contributions, grants, bequests, gifts of money and property, facilities, or services, with or without consideration, from any person, firm, or corporation or from any state, county, municipal corporation, or local government or governing body to enable it to carry out its functions and purpose. The commission is prohibited from paying or compensating any member of the General Assembly, directly or indirectly, any amount in excess of expenses. (Code 1981, § 50-12-133, enacted by Ga. L. 2001, p. 862, § 1.)

ARTICLE 9**WAR OF 1812 BICENTENNIAL COMMISSION**

Editor's notes. — Code Section 50-12-147 provides for the repeal of this article effective December 31, 2015.

50-12-140. (Repealed effective December 31, 2015) Short title.

This article shall be known and may be cited as the “War of 1812 Bicentennial Commission Act.” (Code 1981, § 50-12-140, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-141. (Repealed effective December 31, 2015) Legislative findings; commemorative activities to enhance public understanding of historical time period; purpose of commission; international involvement; promotion of tourism and economic development.

(a) The General Assembly finds and declares that the War of 1812 was a perilous time in our young nation's history. The war was essentially fought over our nation's sovereign right to free trade and the inviolability of our nation's vessels on the high seas; it serves as a timeless reminder of the vulnerability of Georgia's coastline and land borders to attack by elements of a hostile foreign power. During the war period, July 18, 1812, through February 18, 1815, there were 39 counties in Georgia: Baldwin, Bryan, Bulloch, Burke, Camden, Chatham, Clarke, Columbia, Effingham, Elbert, Emanuel, Franklin, Glynn, Greene, Hancock, Jackson, Jasper, Jefferson, Jones, Laurens, Liberty, Lincoln, Madison, McIntosh, Montgomery, Morgan, Oglethorpe, Pulaski, Putnam, Richmond, Screven, Tattnall, Telfair,

Twiggs, Warren, Washington, Wayne, Wilkes, and Wilkinson; Emanuel was added on December 10, 1812. Although not designated within the borders of this state, there existed during the war period territory that would eventually be designated as counties of Georgia; in addition to which, new counties were created from existing counties, and some counties whose boundaries were later redefined were the site of historically significant activity during the War of 1812. Among those counties, but not specifically limited to those now mentioned, are: Appling, Bibb, Bleckley, Charlton, Coffee, Crawford, Crisp, Dodge, Dooly, Early, Lee, Monroe, Muscogee, Pierce, Talbot, Taylor, Ware, Wilcox, Worth, and Upson. While not all counties suffered combat, each of the 39 aforementioned counties contributed troops to the state militia; some had fortifications situated within their respective boundaries; and all had militia training grounds. Various regions of Georgia were affected by the War of 1812 in different ways: coastal regions were subject to combat with British forces, British raiding parties, and the interdiction of coastal shipping between the ports of Savannah and St. Marys; beyond Fort Hawkins (the present day City of Macon), Georgia settlers and troops were subject to raids by rebel elements of the Creek nation allied to Great Britain. Georgia territory occupied by British forces included Brunswick, Cumberland Island, Jekyll Island, St. Marys, and St. Simons Island. The same naval and military forces that burned Washington, D.C., and attacked Fort McHenry, inspiring Francis Scott Key to write the poem which became known as the "Star Spangled Banner," also invaded Cumberland Island, attacked St. Marys and the Battery at Cantonment Point Petre, and wreaked havoc along Georgia's coast. The final combat between British military forces and American military forces, specifically the Georgia Militia, took place on the St. Marys River, near Coleraine, on February 23, 1815, and the final shots fired in anger between British naval forces and American naval forces in American territorial sea took place in Georgia waters on March 16, 1815, off Wassaw Island.

(b) The bicentennial commemoration period offers an excellent opportunity to enhance educational programs, add to the general knowledge of that era, and engender history and heritage based tourism within this state. Therefore, it is in the interest of this state to provide appropriate commemorative activities to maximize public understanding of the meaning of the War of 1812 in the history of Georgia.

(c) The purpose of the commission is to ensure a suitable state-wide observance of the War of 1812 by complementing, cooperating with, and providing assistance to the programs and activities of the various counties involved in the commemoration. The commission is to encourage War of 1812 observances that provide an excellent visitor experience and beneficial interaction between visitors and the natural and cultural resources of the various War of 1812 sites. The commission is

to engage the state archeologist in compiling an inventory of War of 1812 archeological assets on land and in waters under Georgia jurisdiction or control and work in concert with the appropriate federal government agencies when warranted to accomplish that goal.

(d) The commission is also to welcome international involvement in the War of 1812 observances; contribute to, coordinate with, participate in, and enhance the activities of the National War of 1812 Bicentennial Commission; foster and promote the protection of War of 1812 resources; and assist in the appropriate development of heritage and history based tourism and economic benefits to the State of Georgia. (Code 1981, § 50-12-141, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-142. (Repealed effective December 31, 2015) Definitions.

As used in this article, the term:

- (1) "Commemoration" means commemoration of the War of 1812.
- (2) "Commission" means the War of 1812 Bicentennial Commission established in this article.
- (3) "Commissioner" means the commissioner of natural resources.
- (4) "Counties" means those counties mentioned in subsection (a) of Code Section 50-12-141, to wit: Appling, Baldwin, Bibb, Bleckley, Bryan, Bulloch, Burke, Camden, Charlton, Chatham, Clarke, Coffee, Columbia, Crawford, Crisp, Dodge, Dooly, Early, Effingham, Elbert, Emanuel, Franklin, Glynn, Greene, Hancock, Jackson, Jasper, Jefferson, Jones, Laurens, Lee, Liberty, Lincoln, Madison, McIntosh, Montgomery, Monroe, Morgan, Muscogee, Oglethorpe, Pierce, Pulaski, Putnam, Richmond, Screven, Talbot, Tattnall, Taylor, Telfair, Twiggs, Ware, Warren, Washington, Wayne, Wilcox, Wilkes, Wilkinson, Worth, and Upson, and includes agencies and entities of each county.
- (5) "Qualified resident" means any resident of the State of Georgia with an interest in, support for, and expertise appropriate to the commemoration. (Code 1981, § 50-12-142, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-143. (Repealed effective December 31, 2015) Membership and structure of commission; responsibilities.

(a) The commission shall be composed of 28 members as follows:

(1) Thirteen members shall be qualified residents appointed by the commissioner after consideration of nominations submitted by the county commissioners of Baldwin, Bibb, Camden, Chatham, Crawford, Crisp, Fulton, Glynn, Liberty, McIntosh, Pulaski, Telfair, and Twiggs counties;

(2) Three members shall be qualified residents appointed by the commissioner after consideration of nominations submitted by the mayors of the City of Savannah, City of Macon, and the City of St. Marys;

(3) Three members shall be employees of the Department of Natural Resources appointed by the Governor;

(4) One shall be an employee of the Georgia Department of Defense;

(5) One shall be an employee of the Department of Economic Development, Tourism Division;

(6) One shall be an employee of the University System of Georgia from a department of history;

(7) One shall be an employee of the Department of Education;

(8) Four shall be qualified residents appointed by the commissioner, of whom:

(A) One shall be recommended by the majority leader of the Senate;

(B) One shall be recommended by the minority leader of the Senate;

(C) One shall be recommended by the majority leader of the House of Representatives; and

(D) One shall be recommended by the minority leader of the House of Representatives; and

(9) One member shall be appointed by the commissioner from among individuals with experience in the history of the War of 1812.

(b) Those residents of Georgia nominated by the Governor to serve on the National War of 1812 Bicentennial Commission shall ensure the coordination of efforts by the State of Georgia War of 1812 Bicentennial Commission with the efforts of the National War of 1812 Bicentennial Commission.

(c) The appointments of members of the commission shall be made not later than September 11, 2008.

(d) A member shall be appointed for the life of the commission.

(e) A vacancy on the commission:

(A) Shall not affect the powers of the commission; and

(B) Shall be filled in the same manner as the original appointment was made.

(f) The commission shall act only on an affirmative vote of a majority of the members of the commission.

(g) A majority of the members of the commission shall constitute a quorum.

(h) The commission shall select a chairperson and a vice chairperson from among the members of the commission.

(i) The commission shall hold its initial meeting no later than 60 days after the date on which all members of the commission have been appointed.

(j) During the years 2008 through 2011, not less than three times a year the commission shall meet at the call of the chairperson or a majority of the members of the commission.

(k) During the years 2012 through 2015, not less than two times a year the commission shall meet at the call of the chairperson or a majority of the members of the commission.

(l) The commission shall:

(1) Plan, encourage, develop, execute, and coordinate programs, observances, and activities commemorating the historic events that preceded and are associated with the War of 1812;

(2) Facilitate the commemoration throughout the State of Georgia;

(3) Coordinate the activities of the commission with appropriate private, city, and federal agencies including, but not limited to, the National Park Service and the federal Department of Defense;

(4) Encourage civic, patriotic, historical, educational, religious, economic, tourism, and other organizations throughout the State of Georgia to organize and participate in the commemoration to expand the understanding and appreciation of the significance of the War of 1812;

(5) Provide technical assistance to counties, cities, localities, the Department of Natural Resources, and nonprofit organizations to further the commemoration and commemorative events;

(6) Subject to available funds, direct the following regional development centers to coordinate the efforts of the participating counties within their respective regions: Coastal Georgia, Central Savannah River, Heart of Georgia, Atlanta Regional Commission, Southeast Georgia, Northeast Georgia, Middle Georgia, Middle Flint Lower Chattahoochee, South Georgia, and Southwest Georgia;

(7) Subject to available funds, direct the aforementioned regional development centers to provide a calendar of events to the state Departments of Transportation, Economic Development, and Education no later than six months prior to the event date;

(8) Design, develop, and provide, during the commemoration period January 1, 2012, through May 30, 2015, for the purposes of education and tourism, a website that shall include a calendar of commemoration festivities state wide and an explanation of events preceding and associated with the War of 1812 as it was prosecuted on Georgia soil, in Georgia waters, and by military and naval units associated with the State of Georgia deployed in other states or territories;

(9) Design, develop, and provide, during the commemoration period January 1, 2012, through May 30, 2015, an exhibit that will travel throughout the state to interpret events of the War of 1812 for the educational benefit of the residents of and tourists to the State of Georgia;

(10) Subject to available funds, direct the state archeologist to produce an inventory of historically significant structures and, upon completion of said inventory, execute surveys of sites associated with the War of 1812;

(11) Subject to available funds, direct the state archeologist to produce, with the assistance of a state historian, an inventory of historically significant shipwrecks in Georgia waters and, upon completion of said inventory, with the cooperation of appropriate state and federal agencies, execute surveys of significant shipwrecks associated with the War of 1812 in Georgia waters;

(12) Subject to available funds, direct a state historian to provide not later than July 18, 2011, information relating the location of battlegrounds, fortifications, historic sites, routes, trails, and other places of interest to the State Department of Transportation so that agency may produce a "War of 1812 Trail" map which shall be made available for the Georgia War of 1812 Bicentennial period: July 18, 2012, through March 16, 2015;

(13) Subject to available funds, direct a state historian to compile for distribution to appropriate state historic sites and Georgia schools

a pamphlet including the biographies of notable War of 1812 era Georgians: citizens, military figures, political figures, and namesakes for Georgia counties;

(14) Ensure that the War of 1812 commemorations provide a lasting legacy and long-term public benefit leading to protection of the natural and cultural resources associated with the War of 1812; and

(15) Examine and review essential facilities and infrastructure at War of 1812 sites and enable necessary improvements to enhance and maximize visitor experience at the sites.

(m) The commission shall prepare a strategic plan and annual performance plans for any activity carried out by the commission under this article.

(n) The commission shall have no authority to obligate state funds or to require any unit of state or local government to expend or obligate funds. Where any provisions of this article make any power or duty of the commission subject to availability of funding, such provisions are intended to make the exercise of such power or duty contingent on the commission having received grants, donations, or contract funds sufficient for such purpose. (Code 1981, § 50-12-143, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “September 11, 2008” was substituted for “120 days after the date of enactment of this article” at the end of subsection (c).

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

50-12-144. (Repealed effective December 31, 2015) Reporting on gifts, bequests or devises received; final report.

(a) The commission shall submit to the General Assembly an annual report that contains a list of each gift, bequest, or devise to the commission or a member of the commission with a value of more than \$250.00, together with the identity of the donor of each gift, bequest, or devise.

(b) Not later than September 30, 2015, the commission shall submit to the commissioner and the General Assembly a final report that includes:

(1) A summary of the activities of the commission;

(2) A final accounting of any funds received or expended by the commission; and

(3) The final disposition of any historically significant item acquired by the commission and other properties not previously re-

ported. (Code 1981, § 50-12-144, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-145. (Repealed effective December 31, 2015) Authority of commission.

(a) The commission may:

(1) Solicit, accept, use, and dispose of gifts or donations of money, services, and real and personal property related to the commemoration;

(2) Appoint such advisory committees as the commission determines to be necessary to carry out this article;

(3) Authorize any member or employee of the commission to take any action the commission is authorized to take under this article;

(4) Use the United States mails in the same manner and under the same conditions as other agencies of the state government; and

(5) Make grants to communities, nonprofit commemorative commissions or organizations, and research and scholarly organizations to develop programs and products to assist in researching, publishing, marketing, and distributing information relating to the commemoration.

(b) In carrying out this Code section, the commission may:

(1) Procure supplies, services, and property; and

(2) Make or enter into contracts, leases, or other legal agreements.

(c) Any contract, lease, or other legal agreement made or entered into by the commission shall not extend beyond the date of termination of the commission.

(d) The commission may secure directly from a state agency such information as the commission considers to be necessary to carry out this Code section and, upon request of the chairperson of the commission, the head of the agency shall provide information to the commission. (Code 1981, § 50-12-145, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-146. (Repealed effective December 31, 2015) Compensation of members, executive director, and other personnel.

(a) Except as provided in subsection (b) of this Code section, a member of the commission shall serve without compensation.

(b) A member of the commission who is an officer or employee of the State of Georgia shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the State of Georgia.

(c) Subject to available funds, a member of the commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under the law while away from the home or regular place of business of the member in the performance of the duties of the commission.

(d) Subject to available funds, the chairperson of the commission may, without regard to merit system laws, including regulations, appoint and terminate an executive director and such other additional personnel as are necessary to enable the commission to perform the duties of the commission.

(e) Subject to available funds, the employment of an executive director shall be subject to confirmation by the commission.

(f) Subject to available funds, the chairperson of the commission may fix the compensation of the executive director and other personnel without regard to the provisions of the law relating to classification of positions and general schedule pay rates.

(g) At the request of the commission and subject to available funds, the head of any state agency may assign, on a reimbursable or nonreimbursable basis, any of the personnel of the agency to the commission to assist the commission in carrying out the duties of the commission under this article.

(h) The assignment of an employee under subsection (g) of this Code section shall be without loss of merit system status or privilege.

(i) The commission may:

(1) Accept the services of personnel assigned from counties and cities; and

(2) Subject to available funds, reimburse counties and cities for the services of assigned personnel.

(j) The commission may accept and use such voluntary and uncompensated services as the commission determines necessary.

(k) Subject to available funds, the commissioner shall provide to the commission, on a reimbursable basis, such administrative support services as the commission may request.

(l) Subject to available funds, the chairperson of the commission may procure temporary and intermittent services at rates for individuals that do not exceed the daily equivalent of the annual rate.

(m) Nothing in this Code section supersedes the authority of the counties or the Department of Natural Resources concerning the commemoration.

(n) Nothing in this article shall be construed to require state appropriations. (Code 1981, § 50-12-146, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-147. (Repealed effective December 31, 2015) Termination.

(a) The commission shall terminate on December 31, 2015.

(b) Not later than the date of termination, the commission shall transfer any documents, materials, books, manuscripts, miscellaneous printed matter, memorabilia, relics, and exhibits and any materials donated to the commission that relate to the War of 1812 to the Fort Morris (Fort Defiance) State Historic Site.

(c) Any funds held by the commission on the date of termination shall be deposited in the general fund of the treasury.

(d) This article shall stand repealed in its entirety on December 31, 2015. (Code 1981, § 50-12-147, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Index

A

ACCIDENT AND SICKNESS INSURANCE.

**Long-term care partnership
program**, §§49-4-160 to 49-4-165.

ACTIONS.

Medicaid.

False claims, §§49-4-168.2, 49-4-168.3.

Retaliation against employee for
pursuing action, relief for,
§49-4-168.4.

Statute of limitations, §49-4-168.5.

Fraud.

Forfeiture of property and proceeds
obtained through, §49-4-146.3.

Welfare.

Medicaid fraud.

Forfeiture of property and proceeds
obtained through, §49-4-146.3.

Notice of pendency of action against
department.

Service of notice, §49-2-15.

Youth services.

Commissioner of human services.

Instituting or intervening in legal
proceedings, §49-5-18.

ADMINISTRATIVE PROCEDURE.

Day-care centers.

Employees' records checks.

Applicability of act, §49-5-73.

ADOPTION.

Background checks on adults that will have contact with children in department custody.

Department of human services,
§49-2-14.

Home studies.

Department of human services.

Background checks on adults that
will have contact with children
in department custody,
§49-2-14.

Interstate compact on the placement of children.

Child brought into state for adoption.

Notification requirements.

Applicability of provisions,
§49-5-15.

ADOPTION —Cont'd

Interstate compact on the placement of children —Cont'd

Notification requirements.

Child brought into state for
adoption.

Applicability of provisions,
§49-5-15.

License or commission.

Required to place child for adoption,
§49-5-12.

Youth services.

Child brought into state for placement
or adoption.

Bond, §49-5-15.

Notice, §49-5-15.

Reports, §49-5-15.

Department of human services.

Powers and duties as to adoption
services, §49-5-8.

ADULT DAY CARE.

Inspection of day care centers, §49-6-85.

Licenses for adult day care centers, §§49-6-80 to 49-6-86.

Defined terms, §49-6-82.

Department.

Defined, §49-6-82.

Inspections, §49-6-85.

Powers and duties, §49-6-84.

Enforcement, §49-6-84.

Fees, §49-6-86.

Inspections, §49-6-85.

Legislative intent, §49-6-81.

License required, §49-6-83.

Purpose, §49-6-81.

Rules and regulations.

Authority to promulgate, §49-6-84.

Short title, §49-6-80.

Transfer of license, §49-6-83.

ADULT DAY CENTER FOR AGING ADULTS LICENSURE ACT.

General provisions, §§49-6-80 to
49-6-86.

Short title, §49-6-80.

AFTERCARE.

Delinquent children.

Commitment, §49-4A-8.

INDEX

AGED PERSONS.

Adult day care.

Licenses for adult day care centers,
§§49-6-80 to 49-6-86.

Appropriations.

Department of human services.
Payment of expenses, §49-6-7.

Community care and services for the elderly, §§49-6-60 to 49-6-64.

Certification for benefits, §49-6-63.

Community care unit.

Defined, §49-6-61.

Establishment within aging section,
§49-6-62.

Definitions, §49-6-61.

Department of community health.

Reimbursement for services
rendered under provisions,
§49-4-156.1.

Department of human services.

Annual progress report, §49-6-62.

Rules and regulations, §49-6-64.

Insurance.

Volunteers.

Coverage, §49-6-63.

Lead agency.

Defined, §49-6-61.

Duties, §§49-6-62, 49-6-63.

Legislative declaration, §49-6-60.

Planning, §49-6-62.

Purpose of provisions, §49-6-60.

Reports.

Annual progress report by
department, §49-6-62.

Rules and regulations, §49-6-64.

Volunteers.

Utilization, §49-6-63.

Council on aging, §§49-6-20 to 49-6-22.

Creation, §49-6-20.

Duties, §§49-6-21, 49-6-21.1.

Meetings, §49-6-20.

Members, §49-6-20.

Expenses, §49-6-22.

Officers, §49-6-20.

Powers, §§49-6-21, 49-6-21.1.

Project 2020: Georgia for a Lifetime.

Report titled, duty to provide,
§49-6-21.1.

Staff and facilities, §49-6-22.

Death.

Old-age assistance.

Payment after death of recipient,
§49-4-35.

Definitions.

Community care and services for the
elderly, §49-6-61.

AGED PERSONS —Cont'd

Department of human services,

§§49-6-1 to 49-6-7.

Appropriations.

Payment of expenses, §49-6-7.

Authority, §49-6-3.

Community care and services for the
elderly.

Annual progress report, §49-6-62.

Rules and regulations, §49-6-64.

Designated agency for federal
programs, §49-6-2.

Division of aging services, §49-6-5.

Creation, §49-6-5.

Duties, §49-6-2.

Expenses.

Payment, §49-6-7.

Federal aid.

Acceptance of federal grants,
§49-6-4.

Designated agency for federal
programs, §49-6-2.

Legislative declaration, §49-6-1.

Powers, §49-6-3.

Grants and gifts.

Acceptance, §49-6-4.

Purpose of provisions, §49-6-1.

Reports.

Annual report, §49-6-6.

Exemptions from levy and sale.

Old-age assistance, §49-4-35.

Family caregiver support, §§49-6-70 to 49-6-77.

Federal aid.

Department of human services.

Acceptance of federal grants,
§49-6-4.

Designated agency for federal
programs, §49-6-2.

General assembly.

Silver-haired legislature, §49-6-40.

Old-age assistance, §§49-4-30 to 49-4-38.

Amending acts.

Claims to assistance subject to,
§49-4-37.

Assignment.

Assistance not assignable, §49-4-35.

Attachment.

Exemption, §49-4-35.

Bankruptcy.

Assistance not subject to bankruptcy
law, §49-4-35.

County boards.

Roll book of employees.

Maintenance, §49-4-38.

INDEX

AGED PERSONS —Cont'd

Old-age assistance —Cont'd

- County departments.
- Duties, §49-4-34.
- Death of recipient.
 - Payment of assistance after, §49-4-35.
- Definitions, §49-4-31.
- Department of human services.
 - Duties, §49-4-33.
- Eligibility, §49-4-32.
- Executions.
 - Exemption from, §49-4-35.
- Exemptions, §49-4-35.
- Garnishment.
 - Exemption, §49-4-35.
- Old-age assistance act.
 - Short title, §49-4-30.
- Removal of recipient to other county.
 - Payment of assistance after, §49-4-36.
- Repealing acts.
 - Claims to assistance subject to, §49-4-37.
- Residence.
 - Payment after recipient moves to another county, §49-4-36.
- Short title.
 - Old-age assistance act, §49-4-30.
- Transfer.
 - Assistance not transferable, §49-4-35.

Reports.

- Community care and services for the elderly.
 - Annual progress report by department, §49-6-62.
- Department of human services.
 - Annual report, §49-6-6.

Rules and regulations.

- Community care and services for the elderly, §49-6-64.

Silver-haired legislature, §49-6-40.

Transportation.

- Department of human services.
 - Transportation for elderly and disabled persons.
 - Fund, §49-1-7.
 - Generally, §§49-2-12 to 49-2-13.1.

AID TO THE BLIND ACT.

- General provisions, §§49-4-50 to 49-4-61.**

AID TO THE BLIND ACT —Cont'd

- Short title, §49-4-50.**

ALCOHOLIC BEVERAGES.

Juvenile justice.

- Guard lines, crossing with prohibited items, §49-4A-16.
- Possession of prohibited items by juvenile detainee, §49-4A-18.

Minors.

- Juvenile justice.
 - Guard lines, crossing with prohibited items, §49-4A-16.
 - Possession of prohibited items by juvenile detainee, §49-4A-18.

ALIENS.

Temporary assistance for needy families.

- Qualified aliens, §49-4-188.

AMENDMENTS.

Blind persons.

- Aid to the blind.
 - Claims to assistance.
 - Subject to amendments or repeals, §49-4-61.

Disabled persons.

- Aid to the disabled.
 - Claims to assistance.
 - Subject to amendments or repeals, §49-4-86.

Old-age assistance.

- Claims subject to amendments or repeals, §49-4-37.

AMPHETAMINES.

Juvenile justice.

- Guard lines, crossing with prohibited items, §49-4A-16.
- Possession of prohibited items by juvenile detainee, §49-4A-18.

APPEALS.

Child abuse and neglect.

- Central child abuse registry.
 - Alleged child abuser, §49-5-183.1.
 - Expungement of name from registry.
 - Decision on, §49-5-184.

Medicaid.

- Administrative hearings and appeals, §49-4-153.
- Judicial review, §49-4-153.

Welfare.

- Medicaid, §49-4-153.

INDEX

APPEALS —Cont'd

Welfare —Cont'd

- Personal representatives.
- Appointment or removal, §49-4-172.
- Public assistance, §49-4-13.

APPROPRIATIONS.

Aged persons.

- Department of human services.
- Payment of expenses, §49-6-7.

Economic rehabilitation services.

- Allocation, §49-8-5.

Welfare, §49-2-10.

- Matching federal funds.
- Use of appropriations for, §49-2-11.
- Public purpose.
- State welfare funds declared to be for, §49-2-10.

Youth services.

- Funding of costs of benefits and administration, §49-5-7.

ASSIGNMENTS.

Aged persons.

- Old-age assistance.
- Assignment prohibited, §49-4-35.

Blind and visually impaired persons.

- Aid to the blind.
- Assistance not assignable, §49-4-58.

Disabled persons.

- Aid to the disabled.
- Assistance not transferable, §49-4-84.

Medicaid.

- Claims of recipients to medical care from third party.
- Assignment to department, §49-4-149.
- Restrictions on transfer or assignment, §49-4-147.

AT-RISK CHILDREN.

Georgia mentoring program, §49-5-156.

ATTACHMENT.

Aged persons.

- Old-age assistance.
- Exemption, §49-4-35.

Blind and visually impaired persons.

- Aid to the blind.
- Exemption, §49-4-58.

Disabled persons.

- Aid to the disabled.
- Exemption, §49-4-84.

Exemption.

- Aid to the blind, §49-4-58.
- Aid to the disabled, §49-4-84.

ATTACHMENT —Cont'd

Exemption —Cont'd

- Old-age assistance, §49-4-35.

Old-age assistance.

- Exemption, §49-4-35.

ATTORNEY GENERAL.

Child welfare agencies.

- Violations of laws and regulations.
- Civil penalty, §49-5-12.1.

Medicaid, false claims.

- Actions by attorney general, §§49-4-168.2, 49-4-168.3.

ATTORNEYS' FEES.

Medicaid, false claims actions, §49-4-168.2.

AUDITS.

Medicaid.

- Obtaining information for audit, §49-4-151.

AWARDS.

Georgia mentoring program.

- Outstanding academic volunteer or mentor service, §49-5-156.

B

BANKRUPTCY AND INSOLVENCY.

Aged persons.

- Old-age assistance not subject to bankruptcy law, §49-4-35.

Blind and visually impaired persons.

- Aid to the blind not subject to bankruptcy law, §49-4-58.

Disabled persons.

- Aid to the disabled.
- Assistance not subject to bankruptcy law, §49-4-84.

BEGGING.

Blind persons, §49-4-52.

BIRTH.

Temporary assistance for needy families.

- Increment in benefits for child birth during eligibility period.
- Schedule of assistance to eliminate, §49-4-186.

BLIND AND VISUALLY IMPAIRED PERSONS.

Aid to the blind, §§49-4-50 to 49-4-61.

- Amending acts.
- Claims to assistance subject to, §49-4-61.

INDEX

BLIND AND VISUALLY IMPAIRED PERSONS —Cont'd

Aid to the blind —Cont'd

- Assignments.
 - Assistance not transferable, §49-4-58.
- Attachment.
 - Exemption, §49-4-58.
- Bankruptcy.
 - Assistance not subject to bankruptcy law, §49-4-58.
- Citation of act.
 - Short title, §49-4-50.
- County departments.
 - Duties, §49-4-54.
 - Supplementary treatment services, §49-4-57.
- Death of recipient.
 - Payment after, §49-4-58.
 - Recovery of assistance payments from recipient's estate, §49-4-59.
- Definitions, §49-4-51.
- Department of human services.
 - Duties, §49-4-53.
- Eligibility for assistance, §49-4-52.
- Executions.
 - Exemption, §49-4-58.
- Garnishment.
 - Exemption, §49-4-58.
- Ophthalmologist.
 - Defined, §49-4-51.
 - Examination of applicant by, §49-4-55.
 - Reexamination of recipient's eyesight, §49-4-56.
- Optometrist.
 - Defined, §49-4-51.
 - Examination of applicant by, §49-4-55.
 - Reexamination of recipient's eyesight, §49-4-56.
- Removal of recipient to another county.
 - Payment of assistance after, §49-4-60.
- Repealing acts.
 - Claims to assistance subject to, §49-4-61.
- Residents.
 - Eligibility for assistance, §49-4-52.
 - Payment of assistance after recipient moves to another county, §49-4-60.
- Supplementary treatment services, §49-4-57.

BLIND AND VISUALLY IMPAIRED PERSONS —Cont'd

Aid to the blind —Cont'd

- Title of act.
 - Short title, §49-4-50.
- Transfer.
 - Assistance not transferable, §49-4-58.
- Assignments.**
 - Aid to the blind.
 - Assistance not assignable, §49-4-58.
- Attachment.**
 - Aid to the blind.
 - Exemption, §49-4-58.
- Bankruptcy.**
 - Aid to the blind.
 - Assistance not subject to bankruptcy law, §49-4-58.
- Death.**
 - Aid to the blind.
 - Payment of assistance after death of recipient, §49-4-58.
 - Recovery of assistance payments from recipient's estate, §49-4-59.
- Definitions.**
 - Aid to the blind, §49-4-51.
- Executions.**
 - Aid to the blind.
 - Exemptions, §49-4-58.
- Exemptions from levy and sale.**
 - Aid to the blind, §49-4-58.
- Garnishment.**
 - Aid to the blind.
 - Exemption, §49-4-58.
- Georgia vocational rehabilitation agency.**
 - Vending facilities on state property, §§49-9-40 to 49-9-42.
- Vending facilities on state property, operation, §§49-9-40 to 49-9-42.**
 - Authorization to operate, §49-9-42.
 - Definitions, §49-9-40.
 - Income to agency controlling space.
 - Restrictions, §49-9-41.
 - Preference to persons licensed by division of rehabilitation services, §49-9-42.
 - Public policy, declaration, §49-9-41.
- Vocational rehabilitation services.**
 - Georgia vocational rehabilitation agency.
 - Deaf-blind services leading to maximum independence and employment, §49-9-21.

INDEX

BLOOD TESTS.

Temporary assistance for needy families.

Drug testing of applicants, §49-4-193.

BOARDS.

Georgia vocational rehabilitation board, §49-9-2.

Governor's office for children and families.

Advisory board, §§49-5-134, 49-5-135.

Physicians and surgeons.

Joint board of family practice.

General provisions, §§49-10-1 to 49-10-4.

Vocational rehabilitation board, §49-9-2.

BONDS, SURETY.

Economic rehabilitation services.

Agency employees, §49-8-5.

Welfare.

County directors, §49-3-3.

Youth services.

Adoption.

Child brought into state for placement or adoption, §49-5-15.

BOOT CAMP.

Juvenile justice department.

Delinquent children committed to department.

Parks, camps, etc.

Operation of or placement of children in, §49-4A-8.

BUDGETS.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency.

Budget estimates, §49-9-9.

BURDEN OF PROOF.

Medicaid.

False claims, §49-4-168.3.

Forfeiture of property and proceeds obtained through fraud.

Proof that the property is subject to forfeiture, §49-4-146.3.

C

CAMPS.

Forestry camps.

Children and youth services.

Powers and duties of department, §49-5-8.

CAPITOL OF STATE.

Silver-haired legislature meetings at state capitol, §49-6-40.

CARETAKERS.

Child abuse and deprivation records.

Child abuse defined, §49-5-40.

Child abuse registry.

Child abuse defined, §49-5-180.

Reporting of abuse cases to division of family and children services, §49-5-183.

CART SERVICE.

Vending facilities on state property, §§49-9-40 to 49-9-42.

CELL PHONES.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

CENTRAL CHILD ABUSE REGISTRY.

General provisions, §§49-5-180 to 49-5-187.

CHARITIES.

Transfer of assets to nonprofit corporations to department of human services, §49-1-6.

Youth services.

Existing charters of charitable institutions not affected, §49-5-20.

CHILD ABUSE AND NEGLECT.

Appeals.

Central child abuse registry.

Alleged child abuser, §49-5-183.1.

Expungement of name from registry.

Decision on, §49-5-184.

Background and record checks.

Record checks for persons supervising children, §§49-5-110 to 49-5-114.

Central child abuse registry,

§§49-5-180 to 49-5-187.

Access to information in registry, §49-5-185.

Administrative law judge.

Defined, §49-5-180.

Alleged child abuser.

Appeal of classification, §49-5-183.1.

Defined, §49-5-180.

Hearing on classification, §49-5-183.1.

Notice of classification to, §49-5-183.1.

INDEX

CHILD ABUSE AND NEGLECT

—Cont'd

Central child abuse registry —Cont'd

Alleged child abuser —Cont'd

Transmission of name to division,
§49-5-183.1.

Confidentiality of information,
§49-5-186.

Access to information in registry,
§49-5-185.

Unauthorized use of information.
Misdemeanors, §49-5-186.

Definitions, §49-5-180.

Division of family and children
services.

Definition of division, §49-5-180.

Reporting of abuse cases to,
§49-5-183.

Period within which reported
information to be included,
§49-5-184.

Establishment, §49-5-181.

Expungement of name from registry,
§49-5-184.

Immunity, §49-5-187.

Manner of operation, §49-5-182.

Notification of individual listed in
registry, §49-5-181.

Purpose, §49-5-182.

Reporting of abuse cases to division,
§49-5-183.

Period within which reported
information to be included,
§49-5-184.

Confidentiality of information in central child abuse registry, §§49-5-185, 49-5-186.

Confidentiality of records, §§49-5-40 to 49-5-46.

Conflict of laws.

Provisions not to conflict with
federal law, §49-5-43.

Exceptions, §§49-5-41, 49-5-44.

Juvenile drug use, §49-5-41.1.

Federal aid.

Provisions not to lose federal funds,
§49-5-43.

Immunity.

Department or agency not liable for
providing access or disclosure of,
§49-5-46.

Juvenile drug use records.

Allowing unauthorized access to.

Misdemeanors, §49-5-45.

Inspection and retention, §49-5-41.1.

CHILD ABUSE AND NEGLECT

—Cont'd

Confidentiality of records —Cont'd

Restricted access, §49-5-40.

Exceptions, §§49-5-41, 49-5-41.1,
49-5-44.

Rules and regulations, §49-5-42.

Unauthorized access to records,
§49-5-44.

Conflict of laws.

Records.

Confidentiality.

Provisions not to conflict with
federal law, §49-5-43.

Definitions.

Central child abuse registry,
§49-5-180.

Records, §49-5-40.

Drugs.

Records.

Allowing unauthorized access to
juvenile drug use records.

Misdemeanors, §49-5-45.

Inspection and retention of records
of juvenile drug use, §49-5-41.1.

Federal aid.

Records.

Confidentiality.

Provisions not to lose federal
funds, §49-5-43.

Immunity.

Central child abuse registry,
§49-5-187.

Records.

Access to or disclosure of records.

Department or agency not liable,
§49-5-46.

Notice.

Central child abuse registry.

Alleged child abuser.

Notice of classification to,
§49-5-183.1.

Notification of individual listed in
registry, §49-5-181.

Records.

Confidentiality, §§49-5-40 to 49-5-46.

Conflict of laws.

Provisions not to conflict with
federal law, §49-5-43.

Exceptions, §§49-5-41, 49-5-44.

Juvenile drug use, §49-5-41.1.

Federal aid.

Provisions not to lose federal
funds, §49-5-43.

INDEX

CHILD ABUSE AND NEGLECT

—Cont'd

Records —Cont'd

Confidentiality —Cont'd

Immunity.

Department or agency not liable
for providing access or
disclosure of, §49-5-46.

Juvenile drug use records.

Allowing unauthorized access to.
Misdemeanors, §49-5-45.

Inspection and retention,
§49-5-41.1.

Restricted access, §49-5-40.

Exceptions, §§49-5-41, 49-5-41.1,
49-5-44.

Rules and regulations, §49-5-42.

Unauthorized access to records,
§49-5-44.

Definitions, §49-5-40.

Reporting of child abuse.

Central child abuse registry.

Reporting of abuse cases to division
of family and children services,
§§49-5-183, 49-5-184.

Rules and regulations.

Records.

Confidentiality, §49-5-42.

Witnesses.

Central child abuse registry.

Alleged child abuser.

Hearing on classification.

Children under 14 years of age
not required to testify,
§49-5-183.1.

CHILD ADVOCATE FOR THE PROTECTION OF CHILDREN. Governor's office for children and families.

Cooperative contracts with, §49-5-133.

CHILDBIRTH.

Children and youth act generally,
§§49-5-1 to 49-5-23.

CHILD CARE.

Children and youth act, §§49-5-1 to
49-5-23.

**Inspection warrants for residential
child care licensing,** §§49-2-20 to
49-2-25.

Contents of warrant, §49-2-23.

Definitions, §49-2-20.

Evidence inadmissible in criminal
proceedings, §49-2-24.

Injunctions, §49-2-25.

CHILD CARE —Cont'd

**Inspection warrants for residential
child care licensing —Cont'd**

Issuance.

Procedure, §49-2-22.

Validity, requirements, §49-2-23.

Who may obtain, §49-2-21.

Residential child care licensing.

Inspection warrants, §§49-2-20 to
49-2-25.

CHILD CARE CENTERS.

**Inspection warrants for residential
child care licensing,** §§49-2-20 to
49-2-25.

Residential child care licensing.

Inspection warrants, §§49-2-20 to
49-2-25.

CHILD CARE LEARNING CENTERS.

Liability insurance.

Recommendation to carry, notice
facility not covered, §49-5-12.

Youth services.

Adult-child ratio.

Federal adult-child ratio.

Private centers not required to
meet, §49-5-13.

Private centers.

Adult-child ratio.

Not required to meet federal
adult-child ratio, §49-5-13.

CHILD-CARING INSTITUTIONS.

Civil penalty.

Violations of laws and regulations,
§49-5-12.1.

Criminal record.

Owners with prohibited from
operating, §49-2-14.1.

Criminal records checks.

Employees, §§49-5-60 to 49-5-74.

Administration of provisions,
§49-5-74.

Administrative procedure act.

Applicability, §49-5-73.

Confidentiality of information.

Unauthorized use of criminal
history record information,
§49-5-70.

Cooperation among state agencies,
§49-5-70.

Definitions, §49-5-60.

Directors.

Change of director.

Requirements upon, §49-5-68.

INDEX

CHILD-CARING INSTITUTIONS

—Cont'd

Criminal records checks —Cont'd

Employees —Cont'd

Directors —Cont'd

Records check application for
director of new facility,
§49-5-62.

Emergency temporary employees,
§49-5-67.

Fines.

Unauthorized use of criminal
history record information,
§49-5-70.

Fingerprinting, §49-5-64.

Change of director, §49-5-68.

Determination on basis of,
§49-5-65.

Foster care homes.

Fingerprint records check and
preliminary records check for,
§49-5-69.1.

Foster parents.

Use of foster parents known to
have criminal records,
§49-5-69.1.

Immunity, §49-5-71.

Issuance of license.

Preliminary records check
determination satisfactory,
§49-5-63.

Misdemeanors.

Employment requirements.

Violations, §49-5-69.

Foster parents known to have
criminal records.

Use, §49-5-69.1.

Mitigation of conviction.

Consideration of matters in
mitigation, §49-5-73.

Preliminary records check, §49-5-62.

Alternative to requirement,
§49-5-67.

Employment requirements,
§49-5-69.

National fingerprint records check
determination, §49-5-62.

Notice of determination based on,
§49-5-63.

State fingerprint records check
determination, §49-5-62.

Unsatisfactory determination.

Effect, §49-5-63.

Prison terms.

Unauthorized use of criminal
history record information,
§49-5-70.

CHILD-CARING INSTITUTIONS

—Cont'd

Criminal records checks —Cont'd

Employees —Cont'd

Revocation of suspension of license.
Fingerprinting.

Determination on basis of,
§49-5-65.

Revocation or suspension of license.

Employment requirements.

Violations, §49-5-69.

Supplemental nature of
requirements, §49-5-72.

Owners, §49-2-14.1.

Defined, §49-5-3.

**Emergency protection of children in
certain institutions**, §§49-5-90 to
49-5-92.

Licensing and inspection, §49-5-12.

Separate license for each facility,
§§49-5-61, 49-5-66.

Needy or dependent children.

Right to receive after license or
commission, §49-5-12.

**Recall notices on unsafe child and
infant products.**

Agencies to make available, posting
phone number and website of U.S.
consumer product safety
commission, §49-5-23.

**Regulation by department of human
services**, §49-5-8.

Separate director for each facility,
§§49-5-61, 49-5-66.

CHILD PLACEMENT.

License or commission.

Required to place child temporarily or
permanently in home, §49-5-12.

CHILD-PLACING AGENCIES.

Civil penalty.

Violations of laws and regulations,
§49-5-12.1.

Criminal record.

Owner with prohibited from operating,
§49-2-14.1.

Criminal records checks.

Employees, §§49-5-60 to 49-5-74.

Administration of provisions,
§49-5-74.

Administrative procedure act.

Applicability, §49-5-73.

Confidentiality of information.

Unauthorized use of criminal
history record information,
§49-5-70.

INDEX

CHILD-PLACING AGENCIES

—Cont'd

Criminal records checks —Cont'd

Employees —Cont'd

Cooperation among state agencies,
§49-5-70.

Definitions, §49-5-60.

Directors.

Change of director.

Requirements upon, §49-5-68.

Records check application for
director of new facility,
§49-5-62.

Emergency temporary employees,
§49-5-67.

Fines.

Unauthorized use of criminal
history record information,
§49-5-70.

Fingerprinting, §49-5-64.

Change of director, §49-5-68.

Determination on basis of,
§49-5-65.

Foster care homes.

Fingerprint records check and
preliminary records check for,
§49-5-69.1.

Foster parents.

Use of foster parents known to
have criminal records,
§49-5-69.1.

Immunity, §49-5-71.

Issuance of license.

Preliminary records check
determination satisfactory,
§49-5-63.

Misdemeanors.

Employment requirements.

Violations, §49-5-69.

Foster parents known to have
criminal records.

Use, §49-5-69.1.

Mitigation of conviction.

Consideration of matters in
mitigation, §49-5-73.

Preliminary records check, §49-5-62.

Alternative to requirement,
§49-5-67.

Employment requirements,
§49-5-69.

National fingerprint records check
determination, §49-5-62.

Notice of determination based on,
§49-5-63.

State fingerprint records check
determination, §49-5-62.

CHILD-PLACING AGENCIES

—Cont'd

Criminal records checks —Cont'd

Employees —Cont'd

Preliminary records check —Cont'd
Unsatisfactory determination.

Effect, §49-5-63.

Prison terms.

Unauthorized use of criminal
history record information,
§49-5-70.

Revocation or suspension of license.

Employment requirements.

Violations, §49-5-69.

Fingerprinting.

Determination on basis of,
§49-5-65.

Supplemental nature of
requirements, §49-5-72.

Owners, §49-2-14.1.

Defined, §49-5-3.

Foster family homes.

Duties when placing children,
§49-5-12.

Licensing and inspection, §49-5-12.

Separate license for each facility,
§§49-5-61, 49-5-66.

Needy or dependent children.

Right to receive after license or
commission, §49-5-12.

**Recall notices on unsafe child and
infant products.**

Agencies to make available, posting
phone number and website of U.S.
consumer product safety
commission, §49-5-23.

**Regulation by department of human
services**, §49-5-8.

Separate director for each facility,
§§49-5-61, 49-5-66.

CHILD PROTECTIVE SERVICES INFORMATION SYSTEM.

Central child abuse registry.

General provisions, §§49-5-180 to
49-5-187.

CHILDREN.

Central child abuse registry.

General provisions, §§49-5-180 to
49-5-187.

Children and youth services, §§49-5-1
to 49-5-23.

**Delinquency prevention and
community-based services**,
§§49-5-150 to 49-5-155.

INDEX

CHILDREN —Cont'd

Emergency protection of children in certain institutions, §§49-5-90 to 49-5-92.

Emotional problems.

Children and adolescents with severe emotional problems, §§49-5-220 to 49-5-227.

Georgia mentoring program, §49-5-156.

Governor's office for children and families, §§49-5-130 to 49-5-135.

Medicaid.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

Occupational, speech or physical therapy.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

Record checks for persons supervising children, §§49-5-110 to 49-5-114.

Runaway and homeless youth.

Registration of organizations providing services to youth, §§49-5-160 to 49-5-164.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

Youth services, §§49-5-1 to 49-5-23.

CHILDREN AND YOUTH ACT.

General provisions, §§49-5-1 to 49-5-23.

Short title, §49-5-1.

CHILDREN AND YOUTH SERVICES.

General provisions, §§49-5-1 to 49-5-23.

PeachCare for Kids act, §§49-5-270 to 49-5-273.

CHILDREN'S TRANSITION CARE CENTERS.

Available to all children in state, §49-5-12.

Criminal record.

Owners with prohibited from operating, §49-2-14.1.

Criminal records checks for owners, §49-2-14.1.

Defined, §49-5-3.

License or commission, inspection, §49-5-12.

CHILDREN'S TRANSITION CARE CENTERS —Cont'd

Needy or dependent children.

Right to receive after license or commission, §49-5-12.

Number of children serving.

Restriction, §49-5-12.

Separate and apart from other facility licensed by department, §49-5-12.

Services provided, §49-5-12.

CHILD WELFARE AGENCIES.

Abuses derelictions or deficiencies.

Investigation, §49-5-12.

Application for license or commission, §49-5-12.

Assistance in meeting rules and regulations.

Department of human services, §49-5-12.

Civil penalty.

Violations of laws and regulations, §49-5-12.1.

Criminal background checks.

Owners of facilities, §49-2-14.1.

Criminal record.

Owners with criminal record prohibited from operating, §49-2-14.1.

Defined, §49-5-12.

Display of license or commission, §49-5-12.

Injunction.

Operating without license, §49-5-12.

Inspection, §49-5-12.

Licensing or commissioning, §49-5-12.

Runaway children.

Registration of organizations providing services to youth.

Organizations not exempt from licensing and regulation as child welfare agency, §49-5-164.

Separate license for each facility, §§49-5-61, 49-5-66.

Operation without license or commission.

Criminal penalty, §49-5-12.

Recall notices on unsafe child and infant products.

Agencies to make available, posting phone number and website of U.S. consumer product safety commission, §49-5-23.

INDEX

CHILD WELFARE AGENCIES

—Cont'd

Refusal of license or commission,
§49-5-12.

**Regulation by department of human
services,** §49-5-8.

Runaway children.

Registration of organizations providing
services to youth.

Organizations not exempt from
licensing and regulation as child
welfare agency, §49-5-164.

Separate director for each facility,
§§49-5-61, 49-5-66.

Temporary license or commission,
§49-5-12.

CLAIMS.

False claims.

Medicaid false claims, §§49-4-168 to
49-4-168.6.

Medicaid false claims, §§49-4-168 to
49-4-168.6.

CLOTHING.

Children and youth services.

Programs and protection.

Maintenance defined, §49-5-3.

COIN-OPERATED MACHINES.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

COLOR OF LAW.

Department of human services.

Immunity for actions taken under
color of law, §49-2-17.

COMMON JAILS.

Children and youth services.

Powers and duties of department,
§49-5-8.

COMMUNITY HEALTH, DEPARTMENT OF.

Adult day care centers.

Licenses, §§49-6-80 to 49-6-86.

Medicaid, §§49-4-140 to 49-4-157.

PeachCare for Kids act, §§49-5-270 to
49-5-273.

COMPLAINTS.

Medicaid, false claims actions,
§§49-4-168.2, 49-4-168.3.

Medicaid fraud.

Forfeiture of property and proceeds
obtained through, §49-4-146.3.

COMPROMISE AND SETTLEMENT.

Child welfare agency laws and regulations.

Penalties for violations, §49-5-12.1.

Medicaid, false claims.

Attorney general compromise of action
brought by private person,
§49-4-168.2.

Medical assistance.

Claims, §49-4-148.

COMPULSORY PROCESS.

Georgia public assistance act of 1965.

Examination of financial records and
instances of alleged fraud,
§49-4-15.1.

CONFIDENTIALITY OF INFORMATION.

Child abuse and neglect.

Central child abuse registry,
§§49-5-185, 49-5-186.

Records, §§49-5-40 to 49-5-46.

Day-care centers.

Employees' records checks.

Unauthorized use of criminal history
record information, §49-5-70.

Juvenile courts.

Delinquent children.

Commitment to department of
juvenile justice.

Use of records, §49-4A-8.

Medicaid.

Records.

Restrictions on use of information,
§49-4-150.

Vocational rehabilitation services,
§49-9-18.

Welfare.

Public assistance records.

Use or disclosure of information,
§49-4-14.

CONFLICTS OF INTEREST.

Welfare.

Sales by certain individuals to
institutions prohibited, §49-1-4.

CONFLICTS OF LAW.

Child abuse and neglect.

Records.

Confidentiality.

Provisions not to conflict with
federal law, §49-5-43.

INDEX

CONSPIRACIES.

Medicaid, false claims.

Civil penalties, §49-4-168.1.

CONTINUANCES.

Medicaid, false claims.

Actions by attorney general,
§49-4-168.2.

CONTRABAND.

Juvenile justice.

Guard lines.
Crossing with prohibited items,
§49-4A-16.
Possession of prohibited items by
juvenile detainee, §49-4A-18.
Taking prohibited items into juvenile
detention facilities, §49-4A-17.

CONTRACEPTIVES.

Family planning services.

Defined, §49-7-2.

CONTRACTS.

Disabled adults.

Family caregiver support, §49-6-73.

Youth services.

Department of human services.
Power to contract, §49-5-16.

CONTROLLED SUBSTANCES.

Juvenile justice.

Guard lines, crossing with prohibited
items, §49-4A-16.
Possession of prohibited items by
juvenile detainee, §49-4A-18.

COST EFFECTIVE.

Medical assistance.

Establishment by lead agency of
community care services, §49-6-63.

COST EFFICIENT.

Department of juvenile justice.

Development of system with cost
efficient options maximized,
§49-4A-3.

COSTS.

Medicaid, false claims.

Actions by private person, §49-4-168.2.
Civil penalties, §49-4-168.1.

COUNCILS.

Aging, §§49-6-20 to 49-6-22.

Welfare administration council,
§49-2-16.

COUNTERS.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

COUNTIES.

Welfare.

Public assistance.

Costs.

County participation not required,
§49-4-17.

CRIMINAL BACKGROUND CHECKS.

Adoption.

Home studies.

Adults that will have contact with
children in department custody,
§49-2-14.

Child-caring institutions and child-placing institutions.

Criminal records and fingerprint
records checks for employees,
§§49-5-60 to 49-5-74.

Child welfare agencies.

Owners of facilities, §49-2-14.1.

Foster parents.

Home studies.

Adults that will have contact with
children in department custody,
§49-2-14.

Human services department.

Adults that will have contact with
children in department custody,
§49-2-14.

Conviction data on prospective
employees, §49-2-14.

Personal care homes.

Employee records checks generally,
§49-2-14.1.

Persons supervising children.

General provisions, §§49-5-110 to
49-5-114.

Private home care providers,

**community living arrangement
providers, child welfare agency
owners,** §49-2-14.1.

CRIMINAL LAW AND PROCEDURE.

Adoption.

Placing child for adoption without
license or commission, §49-5-12.

Child abuse and neglect.

Central child abuse registry.
Unauthorized use of records,
§49-5-186.

Records, §§49-5-44, 49-5-45.

Child welfare agencies.

Operation without license or
commission, §49-5-12.

INDEX

CRIMINAL LAW AND PROCEDURE

—Cont'd

Day-care centers.

Employee records check, §49-5-69.

Foster parents known to have criminal records.

Use, §49-5-69.1.

Juvenile detention facilities.

Guard lines.

Crossing with prohibited items, §49-4A-16.

Juvenile detention or youth development centers.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Medicaid, §§49-4-15, 49-4-146.1.

Minors.

Aiding or encouraging child to escape, §49-4A-11.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Guard lines.

Crossing with prohibited items, §49-4A-16.

Hindering apprehension of child, §49-4A-11.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Taking prohibited items into juvenile detention facilities, §49-4A-17.

Telecommunications devices.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Vocational rehabilitation services.

Confidentiality violations, §49-9-18.

Welfare.

Department of human services employees.

Conviction data on prospective employees, record search for, §49-2-14.

Fraud, §49-4-15.

Public assistance.

Use or disclosure of information, §49-4-14.

Youth services, §§49-5-12, 49-5-12.1.

D

DEAF AND HEARING IMPAIRED PERSONS.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency.

Deaf-blind services leading to maximum independence and employment, §49-9-21.

DEATH.

Aged persons.

Old-age assistance.

Payment after death of recipient, §49-4-35.

Blind and visually impaired persons.

Aid to the blind.

Payment of assistance after death of recipient, §49-4-58.

Recovery of assistance payments from recipient's estate, §49-4-59.

Disabled persons.

Aid to the disabled.

Payment of assistance after death of recipient, §49-4-84.

DECEDENTS' ESTATES.

Medicaid.

Claims by department against estate of recipient, §49-4-147.1.

DEFAMATION.

Child abuse and deprivation records.

Immunity from liability, §49-5-71.

Children's supervisors.

Record checks.

Personal liability, §49-5-113.

DEFINED TERMS.

Abused.

Central child abuse registry, §49-5-180.

Child abuse and deprivation records, §49-5-40.

Abuse investigator.

Central child abuse registry, §49-5-180.

INDEX

DEFINED TERMS —Cont'd

Abuse registry, §49-5-180.

Academic mentor.

Georgia mentoring program,
§49-5-156.

Academic volunteer and mentor.

Georgia mentoring program,
§49-5-156.

Administrative law judge.

Central child abuse registry,
§49-5-180.

Adult.

Family caregiver support, §49-6-72.

Adult day care.

Licenses for adult day care centers,
§49-6-82.

Adult day center.

Licenses for adult day care centers,
§49-6-82.

Adult day health services.

Licenses for adult day care centers,
§49-6-82.

Aged.

Medicaid, §49-4-146.1.

Agencies.

Family-planning services, §49-7-2.
Vocational rehabilitation, §49-9-1.

Aging adults.

Licenses for adult day care centers,
§49-6-82.

Aging section.

Community care and services for the
elderly, §49-6-61.

Alleged child abuser.

Central child abuse registry,
§49-5-180.

Annual report.

Children and adolescents with severe
emotional problems, §49-5-221.

Apparel.

Juvenile justice, §49-4A-14.

Applicant.

Aid to the blind, §49-4-51.
Aid to the disabled, §49-4-80.
Old-age assistance, §49-4-31.
Temporary assistance for needy
families, §49-4-181.

Applicant for medical assistance.

Medicaid, §49-4-141.

Area agency on aging.

Family caregiver support, §49-6-72.

Asset disregard.

Long-term care partnership program,
§49-4-161.

DEFINED TERMS —Cont'd

Assist.

Medicaid.

Voluntary termination of provider
agreements, §49-4-146.2.

Assistance.

Aid to the blind, §49-4-51.
Aid to the disabled, §49-4-80.
Old-age assistance, §49-4-31.
Temporary assistance for needy
families, §49-4-181.

Blind person.

Vocational rehabilitation, §49-9-1.

Case management.

Children and adolescents with severe
emotional problems, §49-5-221.

Case manager.

Children and adolescents with severe
emotional problems, §49-5-221.

Cash assistance.

Temporary assistance for needy
families, §49-4-181.

Center.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Child.

Central child abuse registry,
§49-5-180.
Child abuse and deprivation records,
§49-5-40.
Governor's office of children and
families, §49-5-131.

Child abuse, §49-5-40.

Central child abuse registry,
§49-5-180.

Child-caring institution.

Youth services, §49-5-3.

Child in care.

Emergency protection of children in
certain institutions, §49-5-90.

Child in need of services.

Juvenile justice, §49-4A-1.

**Child or adolescent with a severe
emotional disturbance**, §49-5-221.

Child-placing agency.

Youth services, §49-5-3.

Children's transition care center.

Youth services, §49-5-3.

Child welfare agency.

Youth services, §49-5-12.

Child welfare and youth services,
§49-5-3.

Claims.

False Medicaid claims, §49-4-168.

INDEX

DEFINED TERMS —Cont'd

Community action agency.

Economic rehabilitation services,
§49-8-3.

Confirmed.

Central child abuse registry,
§49-5-180.

Convicted.

Medicaid, §49-4-146.1.

Conviction.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Health care facility owner operating
with criminal record.

Prohibition, §49-2-14.1.

Record checks for persons supervising
children, §49-5-110.

Conviction data.

Department of human services,
§49-2-14.

Coordinated system of care.

Children and adolescents with severe
emotional problems, §49-5-221.

Corrective order.

Emergency protection of children in
certain institutions, §49-5-90.

Correct or ameliorate.

Therapy services for children with
disabilities, §49-4-169.1.

Costs.

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

County board.

County or district board of family and
children services, §49-1-1.

County department.

County or district department of
family and children services,
§49-1-1.

County director.

County or district department of
family and children services,
§49-1-1.

Court costs.

Forfeiture of property and proceeds
obtained through medicaid fraud,
§49-4-146.3.

Crime.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

DEFINED TERMS —Cont'd

Crime —Cont'd

Health care facility owner operating
with criminal record.

Prohibition, §49-2-14.1.

Record checks for persons supervising
children, §49-5-110.

Criminal record.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Health care facility owner operating
with criminal record, §49-2-14.1.

Record checks for persons supervising
children, §49-5-110.

Decertification.

Medicaid.

Voluntary termination of provider
agreements, §49-4-146.2.

Delinquent child.

Juvenile justice department, §49-4A-1.

Dementia.

Family caregiver support, §49-6-72.

Department.

Juvenile justice department, §49-4A-1.

Dependent child or youth.

Youth services, §49-5-3.

Detention assessment.

Juvenile justice department, §49-4A-1.

DFACS office.

Central child abuse registry,
§49-5-180.

Director.

Economic rehabilitation services,
§49-8-3.

Disability to employment.

Vocational rehabilitation, §49-9-1.

Emergency order.

Emergency protection of children in
certain institutions, §49-5-90.

Emergency temporary employee.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Employees.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Employer.

Record checks for persons supervising
children, §49-5-110.

INDEX

DEFINED TERMS —Cont'd

Employment history.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

EPSDT program.

Therapy services for children with disabilities, §49-4-169.1.

Established drug test.

Temporary assistance for needy families, §49-4-193.

Evidence based programs or practices.

Juvenile justice department, §49-4A-1.

Facility.

Emergency protection of children in certain institutions, §49-5-90.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Health care facility owner operating with criminal record.

Prohibition, §49-2-14.1.

Family.

Temporary assistance for needy families, §49-4-181.

Family attention home.

Juvenile justice, §49-4A-13.

Family-planning services, §49-7-2.

Federal law.

PeachCare for Kids act, §49-5-272.

Fingerprint records check determination.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Five-year plan.

Children and adolescents with severe emotional problems, §49-5-221.

Foster care home.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Foster parent or parents.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Functionally dependent older adult.

Family caregiver support, §49-6-72.

DEFINED TERMS —Cont'd

Functionally impaired elderly person.

Community care and services for the elderly, §49-6-61.

Funds.

Governor's office of children and families, §49-5-131.

GCIC.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Health care facility owner operating with criminal record, §49-2-14.1.

Record checks for persons supervising children, §49-5-110.

GCIC information.

Health care facility owner operating with criminal record, §49-2-14.1.

Record checks for persons supervising children, §49-5-110.

Georgia medical assistance act of 1977, §49-6-61.

Georgia qualified long-term care partnership program approved policy.

Long-term care partnership program, §49-4-161.

Group-care facility.

Youth services, §49-5-3.

Guardian.

Emergency protection of children in certain institutions, §49-5-90.

Guard lines.

Juvenile justice, §49-4A-16.

Homemaker service.

Youth services, §49-5-3.

Home modification.

Family caregiver support, §49-6-72.

Household income.

Family caregiver support, §49-6-72.

Income.

Family caregiver support, §49-6-72.

Indirect ownership interest.

Medicaid, §49-4-146.1.

Individualized plan.

Children and adolescents with severe emotional problems, §49-5-221.

In loco parentis.

Youth services, §49-5-3.

Inspection warrant.

Residential child care licensing, §49-2-20.

INDEX

DEFINED TERMS —Cont'd

Interest holder.

Medicaid.

Forfeiture of property and proceeds obtained through medicaid fraud, §49-4-146.3.

Juvenile detention center.

Juvenile justice, possession of prohibited items by juvenile detainee, §49-4A-18.

Juvenile detention facilities.

Juvenile justice department, §49-4A-1.

Knowing.

False Medicaid claims, §49-4-168.

Knowingly.

False Medicaid claims, §49-4-168.

Lead agency.

Community care and services for the elderly, §49-6-61.

Legal custody.

Youth services, §49-5-3.

License.

Department of human services.

Disciplinary actions against licensees or license applicants regulated by, §49-2-17.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Health care facility owner operating with criminal record, §49-2-14.1.

Licensed.

Runaway and homeless youth.

Registration of organizations providing services, §49-5-160.

Limited provider agreement.

Medicaid, §49-4-146.2.

Local interagency children's committees.

Children and adolescents with severe emotional problems, §49-5-221.

Long-term care facility.

Medicaid.

Reuse of unit dosage drugs, §49-4-152.3.

Maintenance.

Youth services, §49-5-3.

Managing employee.

Medicaid, §49-4-146.1.

Material.

False Medicaid claims, §49-4-168.

Maternity home.

Youth services, §49-5-3.

Medicaid.

PeachCare for Kids act, §49-5-272.

DEFINED TERMS —Cont'd

Medicaid eligible residents.

Voluntary termination of provider agreements, §49-4-146.2.

Medicaid fraud.

Forfeiture of property and proceeds, §49-4-146.3.

Medical assistance, §49-4-141.

Medically necessary services.

Therapy services for children with disabilities, §49-4-169.1.

Medical model.

Licenses for adult day care centers, §49-6-82.

Monitor.

Emergency protection of children in certain institutions, §49-5-90.

National fingerprint records check determination.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Near fatality.

Child abuse and deprivation records, §49-5-40.

Neglect.

Governor's office of children and families, §49-5-131.

Obligation.

False Medicaid claims, §49-4-168.

Occupational license.

Vocational rehabilitation, §49-9-1.

Older Americans act of 1965, §49-6-61.

Ophthalmologist.

Aid to the blind, §49-4-51.

Optometrist.

Aid to the blind, §49-4-51.

Organization.

Runaway and homeless youth.

Registration of organizations providing services, §49-5-160.

Original source.

Medicaid, false claims, §49-4-168.2.

Out-of-state abuse investigator.

Central child abuse registry, §49-5-180.

Outreach.

Economic rehabilitation services, §49-8-3.

Owners.

Health care facility owner operating with criminal record, §49-2-14.1.

INDEX

DEFINED TERMS —Cont'd

Owners —Cont'd

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

Payment.

Medicaid, §49-4-146.1.

PeachCare, §49-5-272.

Person.

False Medicaid claims, §49-4-168.

Medicaid, §49-4-146.1.

Person with an ownership or control interest.

Medicaid, §49-4-146.1.

Person with disabilities.

Vocational rehabilitation, §49-9-1.

Poverty guideline.

Economic rehabilitation services,
§49-8-3.

Preliminary hearing.

Emergency protection of children in
certain institutions, §49-5-90.

Preliminary records check application.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Preliminary records check determination.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Prevention program.

Governor's office of children and
families, §49-5-131.

Primary caregiver.

Family caregiver support, §49-6-72.

Licenses for adult day care centers,
§49-6-82.

Probation.

Youth services, §49-5-3.

Proceeds.

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

Program.

PeachCare for Kids act, §49-5-272.

Property.

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

DEFINED TERMS —Cont'd

Prosecutor.

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

Prosthetic appliance.

Vocational rehabilitation, §49-9-1.

Protective supervision.

Youth services, §49-5-3.

Provider.

Medicaid, §49-4-146.1.

Provider of medical assistance, §49-4-141.

Public assistance, §49-4-2.

Qualified alien.

Temporary assistance for needy
families, §49-4-188.

Qualified staff.

Runaway and homeless youth.

Registration of organizations
providing services, §49-5-160.

Recidivism.

Juvenile justice department, §49-4A-1.

Recipient.

Aid to the blind, §49-4-51.

Aid to the disabled, §49-4-80.

Old-age assistance, §49-4-31.

Public assistance, §49-4-2.

Temporary assistance for needy
families, §49-4-181.

Recipient of medical assistance, §49-4-141.

Records check.

Persons supervising children,
§49-5-110.

Records check application.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Health care facility owner operating
with criminal record, §49-2-14.1.

Persons supervising children,
§49-5-110.

Regional plan.

Children and adolescents with severe
emotional problems, §49-5-221.

Regulation.

Vocational rehabilitation, §49-9-1.

Rehabilitation center.

Vocational rehabilitation, §49-9-1.

Rehabilitation training.

Vocational rehabilitation, §49-9-1.

Reintegration plan.

Children and adolescents with severe
emotional problems, §49-5-221.

INDEX

DEFINED TERMS —Cont'd

Relative.

Family caregiver support, §49-6-72.

Residential child care licensing law, §49-2-20.

Respite care service.

Family caregiver support, §49-6-72.

Respite care services program.

Licenses for adult day care centers,
§49-6-82.

Risk and needs assessment.

Juvenile justice department, §49-4A-1.

Risk assessment.

Juvenile justice department, §49-4A-1.

Sanction.

Temporary assistance for needy
families, §49-4-185.

Satisfactory determination.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Severely emotionally disturbed child or adolescent, §49-5-221.

Sexual abuse.

Central child abuse registry,
§49-5-180.

Child abuse and deprivation records,
§49-5-40.

Sexual exploitation.

Central child abuse registry,
§49-5-180.

Child abuse and deprivation records,
§49-5-40.

Shelter.

Youth services, §49-5-3.

Shelter care.

Youth services, §49-5-3.

Social model.

Licenses for adult day care centers,
§49-6-82.

State fingerprint records check determination.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

State Medicaid program.

Long-term care partnership program,
§49-4-161.

State plan.

Children and adolescents with severe
emotional problems, §49-5-221.

Medicaid, §49-4-141.

Temporary assistance for needy
families, §49-4-181.

DEFINED TERMS —Cont'd

State plan amendment.

Long-term care partnership program,
§49-4-161.

State property.

Vending facilities on state property,
§49-9-40.

Supplementary services.

Aid to the blind, §49-4-51.

TANF, §49-4-181.

Teenager.

Temporary assistance for needy
families.

LEARNFARE program, §49-4-192.

Telecommunications device.

Juvenile justice, possession of
prohibited items by juvenile
detainee, §49-4A-18.

Termination.

Medicaid, §49-4-146.2.

Therapy services.

Therapy services for children with
disabilities, §49-4-169.1.

Third party.

Medicaid, §49-4-141.

Totally and permanently disabled, §49-4-80.

Unconfirmed.

Central child abuse registry,
§49-5-180.

Unfounded.

Central child abuse registry,
§49-5-180.

Unit dosage drug.

Medicaid, §49-4-152.3.

Unsatisfactory determination.

Employee records checks for
child-caring institutions and
child-placing institutions,
§49-5-60.

Vending facility.

Vending facilities on state property,
§49-9-40.

Vocational rehabilitation, §49-9-1.

Work activity.

Temporary assistance for needy
families, §49-4-181.

Work participation rate.

Temporary assistance for needy
families, §49-4-181.

Workshop.

Vocational rehabilitation, §49-9-1.

Youth.

Juvenile justice, possession of
prohibited items by juvenile
detainee, §49-4A-18.

INDEX

DELINQUENCY PREVENTION AND COMMUNITY-BASED SERVICES, §§49-5-150 to 49-5-155.

DEMENTIA.

Family caregiver support, §§49-6-70 to 49-6-77.

DEPARTMENT OF JUVENILE JUSTICE, §§49-4A-1 to 49-4A-18.

DEVELOPMENTAL DISABILITIES.

Juvenile justice department.

Delinquent children committed to department found to be mentally ill or developmentally disabled.

Return to original court for appropriate disposition, §49-4A-8.

DIPLOMAS.

Special school district.

Authority to issue diplomas, §49-4A-12.

DISABLED PERSONS.

Aid to the blind.

General provisions, §§49-4-50 to 49-4-61.

Aid to the disabled, §§49-4-80 to 49-4-86.

Amending acts.

Claims to assistance subject to, §49-4-86.

Assignments.

Assistance not assignable, §49-4-84.

Attachment.

Exemption, §49-4-84.

Bankruptcy.

Assistance not subject to bankruptcy law, §49-4-84.

Blind persons, §§49-4-50 to 49-4-61.

County departments.

Duties, §49-4-83.

Death of recipient.

Payment of assistance after, §49-4-84.

Definitions, §49-4-80.

Department of human services.

Duties, §49-4-82.

Eligibility for assistance, §49-4-81.

Executions.

Exemption, §49-4-84.

Garnishment.

Exemption, §49-4-84.

Removal of recipient to another county.

Payment of assistance after, §49-4-85.

DISABLED PERSONS —Cont'd

Aid to the disabled —Cont'd

Repealing acts.

Claims to assistance subject to, §49-4-86.

Residents.

Eligibility for assistance, §49-4-81.

Payment of assistance after recipient moves to another county, §49-4-85.

Transfer.

Assistance not transferable, §49-4-84.

Assignments.

Aid to the disabled.

Assistance not transferable, §49-4-84.

Attachment.

Aid to the disabled.

Exemption, §49-4-84.

Bankruptcy.

Aid to the disabled.

Assistance not subject to bankruptcy law, §49-4-84.

Blind and visually impaired persons.

Aid to the blind, §§49-4-50 to 49-4-61.

Vending facilities on state property, §§49-9-40 to 49-9-42.

Death.

Aid to the disabled.

Payment of assistance after death of recipient, §49-4-84.

Definitions.

Aid to the disabled, §49-4-80.

Executions.

Aid to the disabled.

Exemption, §49-4-84.

Exemptions from levy and sale.

Aid to the disabled, §49-4-84.

Garnishment.

Aid to the disabled.

Exemption, §49-4-84.

Temporary assistance for needy families.

Drug testing of applicants and recipients, exceptions, §49-4-193.

Transportation.

Department of human services.

Transportation for elderly and disabled persons.

Generally, §§49-2-12 to 49-2-13.1.

Vending facilities on state property, operation, §§49-9-40 to 49-9-42.

Authorization to operate, §49-9-42.

Definitions, §49-9-40.

INDEX

DISABLED PERSONS —Cont'd

Vending facilities on state property, operation —Cont'd

Income received by agency controlling space.

Restriction, §49-9-41.

Preference to person licensed by division of rehabilitation services, §49-9-42.

Public policy, declaration, §49-9-41.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency, §§49-9-1 to 49-9-42.

DISCIPLINING.

Department of human services.

Powers, §49-2-17.

Employees.

Family-planning services.

Refusal of employee to offer service, §49-7-6.

Minors.

Department of juvenile justice.

Rights and duties, §49-4A-7.

DISCRIMINATION.

Medicaid, false claims.

Actions by private persons or by attorney general.

Retaliation against employee for pursuing action, §49-4-168.4.

DISMISSAL OF ACTIONS.

Medicaid, false claims.

Attorney general dismissal of action brought by private person, §49-4-168.2.

DISTRICT ATTORNEYS.

Welfare overpayments.

Consent agreement to repay, §49-4-15.

DOMESTIC RELATIONS.

Central child abuse registry,

§§49-5-180 to 49-5-187.

DRUGS.

Child abuse and neglect.

Records.

Allowing unauthorized access to juvenile drug use records.

Misdemeanors, §49-5-45.

Inspection and retention of records of juvenile drug use, §49-5-41.1.

Juvenile justice.

Guard lines, crossing with prohibited items, §49-4A-16.

Possession of prohibited items by juvenile detainee, §49-4A-18.

DRUGS —Cont'd

Marijuana.

Juvenile drug use records, §§49-5-41.1, 49-5-45, 49-5-46.

Medicaid.

Controlled medical assistance drug list.

Rebates for sole-source and multiple-source drugs included in, §49-4-152.2.

Prescription drug bidding and rebate program, §49-4-152.1.

Refund of prescription drug rebates. Department contracts to require, §49-4-152.4.

Restocking fees, §49-4-152.5.

Reuse of unit dosage drugs, §49-4-152.3.

Minors.

Juvenile justice.

Guard lines, crossing with prohibited items, §49-4A-16.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Temporary assistance for needy families.

Drug testing of applicants, §49-4-193.

E

EARLY CARE AND EDUCATION PROGRAMS.

Liability insurance.

Recommendation to carry, notice facility not covered, §49-5-12.

ECONOMIC REHABILITATION ACT OF 1975.

General provisions, §§49-8-1 to 49-8-6.

Short title, §49-8-1.

ECONOMIC REHABILITATION SERVICES, §§49-8-1 to 49-8-6.

Administration of provisions, §49-8-4.

Appropriations.

Allocation, §49-8-5.

Boards of directors, §49-8-5.

Defined, §49-8-3.

Bonds, surety.

Agency employees, §49-8-5.

Citation of act.

Short title, §49-8-1.

Commissioner of human services.

Administration of provisions, §49-8-4.

Community action agencies.

Authorized activities, §49-8-6.

INDEX

ECONOMIC REHABILITATION SERVICES —Cont'd

Community action agencies —Cont'd

Defined, §49-8-3.

Employee bonds, §49-8-5.

Unauthorized activities, §49-8-6.

Definitions, §49-8-3.

Director.

Defined, §49-8-3.

Rules and regulations, §49-8-4.

Legislative declaration.

Purpose of provisions, §49-8-2.

Purpose of provisions, §49-8-2.

Rules and regulations.

Director, §49-8-4.

Title of act.

Short title, §49-8-1.

ELDERLY PERSONS.

Adult day care.

Licenses for adult day care centers,
§§49-6-80 to 49-6-86.

Council on aging, §§49-6-20 to 49-6-22.

Silver-haired legislature, §49-6-40.

ELECTIONS.

Vocational rehabilitation services.

Georgia vocational rehabilitation
agency.

Political activity by employees
prohibited, §49-9-19.

EMPLOYEES' RETIREMENT SYSTEM OF GEORGIA.

Youth services.

Department employees.

Membership of certain employees,
§49-5-6.

ESCAPE.

Juvenile justice.

Aiding or encouraging child to escape,
§49-4A-11.

Delinquent children committed to
department, §49-4A-8.

Hindering apprehension of child,
§49-4A-11.

Juvenile detention facilities.

Consequences for escape from
juvenile detention facility,
§49-4A-10.

Youth services.

Misdemeanors.

Aiding, harboring, or encouraging
escapees or hindering their
apprehension, §49-5-21.

EVIDENCE.

Child care licensing.

Inspection warrants, residential child
care licensing.

Evidence inadmissible in criminal
proceedings, §49-2-24.

EXECUTIONS.

Aged persons.

Old-age assistance exemption,
§49-4-35.

Blind and visually impaired persons.

Aid to the blind exemption, §49-4-58.

Disabled persons.

Aid to the disabled exemption,
§49-4-84.

Medicaid.

Exemption, §49-4-147.

Old-age assistance exemption, §49-4-35.

EXEMPTIONS FROM LEVY AND SALE.

Aged persons.

Old-age assistance, §49-4-35.

Blind and visually impaired persons.

Aid to the blind, §49-4-58.

Disabled persons.

Aid to the disabled, §49-4-84.

Medicaid, §49-4-147.

Old-age assistance, §49-4-35.

EXPLOSIVES AND EXPLOSIONS.

Juvenile justice.

Guard lines, crossing with prohibited
items, §49-4A-16.

Possession of prohibited items by
juvenile detainee, §49-4A-18.

Minors.

Juvenile justice.

Guard lines, crossing with
prohibited items, §49-4A-16.

Possession of prohibited items by
juvenile detainee, §49-4A-18.

EXPUNGEMENT OF RECORDS.

Central child abuse registry, §49-5-184.

EYEGLASSES.

Corrective glasses.

When person considered blind,
§49-4-51.

F

FALSE CLAIMS.

Medicaid false claims, §§49-4-168 to 49-4-168.6.

INDEX

FAMILY CAREGIVER SUPPORT, §§49-6-70 to 49-6-77.

Adoption of rules and regulations, §49-6-77.

Adult.

Defined, §49-6-72.

Area agency on aging.

Defined, §49-6-72.

Availability of benefits, §49-6-75.

Caregiver reimbursement, §49-6-74.

Citation of act, §49-6-70.

Definitions, §49-6-72.

Dementia.

Defined, §49-6-72.

Displacement of other programs, §49-6-76.

Eligibility for benefits, §49-6-73.

Entitlements, §49-6-75.

Functionally dependent older adult.

Defined, §49-6-72.

Home modification.

Defined, §49-6-72.

Household income.

Defined, §49-6-72.

Identification of services, §49-6-73.

Income.

Defined, §49-6-72.

Interpretation and construction.

Displacing available under other programs, §49-6-76.

Purpose of provisions, §49-6-71.

Primary caregiver.

Defined, §49-6-72.

Provision of services, §49-6-74.

Purpose of provisions, §49-6-71.

Relative.

Defined, §49-6-72.

Respite care service.

Defined, §49-6-72.

Rules and regulations, §49-6-77.

Short title, §49-6-70.

FAMILY DAY-CARE HOMES.

Liability insurance.

Recommendation to carry, notice facility not covered, §49-5-12.

FAMILY LAW.

Central child abuse registry, §§49-5-180 to 49-5-187.

FAMILY-PLANNING SERVICES, §§49-7-1 to 49-7-9.

Agencies, §§49-7-2 to 49-7-6. Defined, §49-7-2.

FAMILY-PLANNING SERVICES

—Cont'd

Agencies —Cont'd

Employees.

Right to refuse services.

Employees to recognize, §49-7-5.

Right to refuse to offer services,
§49-7-6.

Free services.

Agencies may support, §49-7-4.

Persons to whom agencies may offer services, §49-7-3.

Board of human services.

Rules and regulations, §49-7-8.

Citation of act.

Short title, §49-7-1.

Definitions, §49-7-2.

Department of human services.

Plans and programs to carry out provisions, §49-7-7.

Free services.

Agencies may support, §49-7-4.

Interpretation and construction.

Liberal construction of provisions,
§49-7-9.

Persons to whom agencies may offer services, §49-7-3.

Planning, §49-7-7.

Refusal of services.

Right to refuse, §49-7-5.

Refusal to offer services.

Right of agency employees, §49-7-6.

Rules and regulations, §49-7-8.

Title of act.

Short title, §49-7-1.

FAMILY-PLANNING SERVICES ACT.

General provisions, §§49-7-1 to 49-7-9.

Short title, §49-7-1.

FAMILY PRACTICE.

Joint board of family practice, §§49-10-1 to 49-10-4.

FEDERAL AID.

Aged persons.

Department of human services.

Acceptance of federal grants,
§49-6-4.

Designated agency for federal programs, §49-6-2.

Child abuse and neglect.

Records.

Confidentiality.

Provisions not to lose federal funds, §49-5-43.

INDEX

FEDERAL AID —Cont'd

Vocational rehabilitation services.

- Georgia vocational rehabilitation agency.
- Authorization to utilize funds, §49-9-6.
- Carrying out purpose of federal statutes, §49-9-7.
- Office of state treasurer as custodian of money received, §49-9-8.

Welfare.

- Department of human services.
- Power to receive and disburse federal funds, §49-2-5.
- Matching federal funds.
- Use of appropriations for, §49-2-11.
- Public purpose.
- Federal welfare funds declared to be for, §49-2-10.
- Receipt and disbursement of federal funds, §49-2-11.

Youth services.

- Powers of board to avoid loss of federal funds, §49-5-7.

FEES.

Adult day care center licensing, §49-6-86.

Medicaid.

- Drug application fees, §49-4-142.

Runaway children.

- Registration of organizations providing services to youth.
- Process for registration, §49-5-161.

FELONIES.

Contraband.

- Juvenile justice.
- Guard lines.
- Crossing with prohibited items, §49-4A-16.
- Possession of prohibited items by juvenile detainee, §49-4A-18.
- Taking prohibited items into juvenile detention facilities, §49-4A-17.

Juvenile justice.

- Aiding or encouraging child to escape, §49-4A-11.
- Commerce with detainee, unlawful trafficking in, §49-4A-17.
- Delinquent children committed to department.
- Notifications upon release of felon, §49-4A-8.
- Guard lines.
- Crossing with prohibited items, §49-4A-16.

FELONIES —Cont'd

Juvenile justice —Cont'd

- Hindering apprehension of child, §49-4A-11.
- Possession of prohibited items by juvenile detainee, §49-4A-18.
- Sentence of felony convict to custody of department, §49-4A-9.
- Taking prohibited items into juvenile detention facilities, §49-4A-17.

Medicaid.

- Fraud, §49-4-15.
- Unlawful acts, §49-4-146.1.

Telecommunications devices.

- Juvenile justice.
- Possession of prohibited items by juvenile detainee, §49-4A-18.

Welfare.

- Fraud, §49-4-15.

FINES.

Adoption.

- Placing child for adoption without license or commission, §49-5-12.

Children.

- Record checks for persons supervising children.
- False information, §49-5-112.

Child welfare agencies.

- Operation without license or commission, §49-5-12.
- Violations of laws and regulations.
- Civil penalty, §49-5-12.1.

Day-care centers.

- Employees' records checks.
- Unauthorized use of criminal history record information, §49-5-70.

Department of human services.

- Actions against applicants or licensees.
- Powers of department, §49-2-17.

Medicaid.

- False claims, §49-4-168.1.
- Unlawful acts, §49-4-146.1.

Minors.

- Record checks for persons supervising children.
- False information, §49-5-112.

FINGERPRINTS.

Child-caring institutions and child-placing agencies.

- Criminal records and fingerprint records checks for employees, §§49-5-60 to 49-5-74.

Human services department.

- Background checks on adults that will have contact with children in department custody, §49-2-14.

INDEX

FOOD STAMPS.

Financial records.

Examination instances of alleged fraud, §49-4-15.1.

Fraud in obtaining, §49-4-15.

Surplus food distribution, §49-4-16.

FORESTRY CAMPS.

Children and youth services.

Powers and duties of department, §49-5-8.

FORFEITURES.

Medicaid fraud.

Property and proceeds obtained through, §49-4-146.3.

FORMS.

Runaway children.

Registration of organizations providing services to youth.

Process for registration, §49-5-161.

FOSTER PARENTS.

Bill of rights, §49-5-281.

Grievances in response to violation.

Right to file, §49-5-281.

Short title, §49-5-280.

Duties when placing children in foster family homes.

Child-placing agencies, §49-5-12.

Home studies.

Department of human services.

Background checks on adults that will have contact with children in department custody, §49-2-14.

Investigation of home and character of persons residing in foster family home.

Duty of child-placing agencies, §49-5-12.

Religious faith.

Placing child with persons of same faith.

Duty of child-placing agencies, §49-5-12.

FOSTER PARENTS BILL OF

RIGHTS, §§49-5-280, 49-5-281.

FRAUD AND DECEIT.

False claims.

Medicaid false claims.

Conduct constituting false claim, §49-4-168.1.

Generally, §§49-4-168 to 49-4-168.6.

Medicaid, §49-4-15.

False claims, §§49-4-168 to 49-4-168.6.

FRAUD AND DECEIT —Cont'd

Medicaid —Cont'd

Financial records.

Examination in instances of alleged fraud, §49-4-15.1.

Forfeiture of property and proceeds obtained through medicaid fraud, §49-4-146.3.

Unlawful acts, §49-4-146.1.

Welfare.

Financial records.

Examination in instances of alleged fraud, §49-4-15.1.

Medicaid, §49-4-146.1.

Forfeiture of property and proceeds obtained through medicaid fraud, §49-4-146.3.

Punishment, §49-4-15.

FRIVOLOUS ACTIONS.

Medicaid fraud.

Forfeiture of property and proceeds obtained through.

Cost on frivolous claims, §49-4-146.3.

FUNDS.

Georgia fund for children and elderly, §49-1-7.

Home delivered meals, transportation services for the elderly and preschool children with special needs fund, §49-1-7.

Welfare.

Department of human services.

Powers as to funds, §49-2-9.

G

GARNISHMENT.

Aged persons.

Old-age assistance.

Exemption, §49-4-35.

Blind and visually impaired persons.

Aid to the blind.

Exemption, §49-4-58.

Disabled persons.

Aid to the disabled.

Exemption, §49-4-84.

Exemption.

Aid to the blind, §49-4-58.

Aid to the disabled, §49-4-84.

Medicaid, §49-4-147.

Old-age assistance, §49-4-35.

Medicaid.

Exemption, §49-4-147.

INDEX

GARNISHMENT —Cont'd

Old-age assistance.

Exemption, §49-4-35.

GENDER.

Pre-kindergarten programs.

Privacy screening, §49-5-22.

GENERAL ASSEMBLY.

Aged persons.

Silver-haired legislature, §49-6-40.

House of representatives.

Speaker.

Council on aging.

Appointment of members,
§49-6-20.

Senate.

President.

Council on aging.

Appointment of members,
§49-6-20.

GEORGIA FAMILY CAREGIVER SUPPORT ACT.

General provisions, §§49-6-70 to
49-6-77.

Short title, §49-6-70.

GEORGIA FUND FOR CHILDREN AND ELDERLY, §49-1-7.

GEORGIA LONG-TERM CARE PARTNERSHIP PROGRAM ACT.

General provisions, §§49-4-160 to
49-4-165.

Short title, §49-4-160.

GEORGIA MEDICAL ASSISTANCE ACT OF 1977.

General provisions, §§49-4-140 to
49-4-157.

Short title, §49-4-140.

GEORGIA PUBLIC ASSISTANCE ACT OF 1965.

General provisions, §§49-4-1 to
49-4-19.

Short title, §49-4-1.

GEORGIA TANF PROGRAM, §§49-4-180 to 49-4-193.

GIFTS.

Vocational rehabilitation services.

Georgia vocational rehabilitation
agency.

Acceptance and use of, §49-9-10.

Authorization to utilize funds,
§49-9-6.

GOOD FAITH.

Day-care centers.

Employees' records checks.

Immunity from liability, §49-5-71.

Minors.

Records checks for persons supervising
children.

Immunity from liability, §49-5-113.

GOVERNOR.

Appointments.

Council on aging, §49-6-20.

Welfare.

Suspension and removal of county
board members, county directors
or employees or officials of
department, §49-1-5.

GOVERNOR'S OFFICE FOR CHILDREN AND FAMILIES, §§49-5-130 to 49-5-135.

Advisory board.

Established, membership, officers,
committees, compensation,
§49-5-134.

Powers, duties, disbursements from
fund, §49-5-135.

Children and adolescents with severe emotional problems.

State plan for coordinated system of
care.

Comment, §49-5-227.

Children and youth coordinating council.

Office successor entity to, §49-5-132.

Children's trust fund commission.

Office successor entity to, §49-5-132.

Clearing-house for child related information and research, §49-5-132.

Definitions, §49-5-131.

Delinquency prevention and community-based services.

Federal grants.

Recipient entity for, §49-5-155.

Duties and responsibilities, §49-5-132.

Established, §49-5-132.

Executive director, §49-5-133.

Federal funds.

Authority to accept, §49-5-132.

Intent of general assembly, §49-5-130.

Legislative findings, §49-5-130.

Office of child advocate.

Cooperative contracts with, §49-5-133.

INDEX

GRANTEES.

Economic rehabilitation services.

Community action agencies.

Public policies as grantees for
federal and other funds, §49-8-2.

GRANTORS.

Aged persons.

Federal aid.

Title to grants and gifts, §49-6-4.

Federal aid.

Aged persons.

Title to grants and gifts, §49-6-4.

GRANTS.

Georgia mentoring program, §49-5-156.

GROUP DAY-CARE HOMES.

Liability insurance.

Recommendation to carry, notice
facility not covered, §49-5-12.

H

HANDICAPPED PERSONS.

Aid to the blind.

General provisions, §§49-4-50 to
49-4-61.

Aid to the disabled, §§49-4-80 to 49-4-86.

Blind and visually impaired persons.

Aid to the blind, §§49-4-50 to 49-4-61.

Vending facilities on state property, §§49-9-40 to 49-9-42.

Vocational rehabilitation services.

Georgia vocational rehabilitation
agency, §§49-9-1 to 49-9-42.

HARASSMENT.

Medicaid, false claims.

Actions by private persons or by
attorney general.

Retaliation against employee for
pursuing action, §49-4-168.4.

HARBORING.

Juvenile justice.

Aiding or encouraging child to escape,
§49-4A-11.

HEALTH.

Family caregiver support, §§49-6-70 to 49-6-77.

Family-planning services.

General provisions, §§49-7-1 to 49-7-9.

HEALTH —Cont'd

Joint board of family practice.

General provisions, §§49-10-1 to
49-10-4.

HEALTH CARE FACILITIES.

Private home care providers.

Criminal record.

Provider with criminal record
prohibited from operating,
§49-2-14.1.

Criminal records checks, §49-2-14.1.

HEALTH CARE SERVICES.

Family caregiver support, §§49-6-70 to 49-6-77.

PeachCare for Kids act, §§49-5-270 to 49-5-273.

Creation, §49-5-273.

Definitions, §49-5-272.

Eligibility, §49-5-273.

Legislative findings, §49-5-271.

Program, §49-5-273.

Purpose, §49-5-271.

Short title, §49-5-270.

HEALTH INSURANCE.

Long-term care partnership

program, §§49-4-160 to 49-4-165.

Medicaid.

Cooperation by insurers in
determining if recipient entitled to
coverage, §49-4-148.

Health coverage and pharmacy
assistance pilot programs.

Authority to establish, §49-4-152.

Limitation of time for filing claims,
§49-4-148.

Qualified long-term care partnership **program,** §§49-4-160 to 49-4-165.

HEALTH RECORDS.

Child abuse and dependency

records, §§49-5-40 to 49-5-46.

HEARINGS.

Central child abuse registry.

Alleged child abuser.

Hearing on classification,
§49-5-183.1.

Expungement of name from registry,
§49-5-184.

Temporary assistance for needy **families.**

Rights of applicant or recipient,
§49-4-13.

INDEX

HEARINGS —Cont'd

Vocational rehabilitation services.

Georgia vocational rehabilitation agency.

Aggrieved persons, §49-9-13.

HINDERING APPREHENSION OR PUNISHMENT OF CRIMINAL.

Juvenile detention facilities.

Escapees, hindering apprehension, §49-4A-11.

HOME DELIVERED MEALS.

Children and elderly, §49-1-7.

HOMELESS PEOPLE.

Runaway and homeless youth.

Registration of organizations providing services to youth, 49-5-160 to §49-5-164.

HOMEMAKER SERVICES.

Defined, §49-5-3.

Department of human services.

Powers and duties, §49-5-8.

Establishment, §49-6-63.

HOME STUDIES.

Department of human services.

Background checks on adults that will have contact with children in department custody, §49-2-14.

HUMAN SERVICES.

Aged persons.

Family caregiver support, §§49-6-70 to 49-6-77.

Board of human services.

Compensation of members, §49-2-2.

Definition of board, §49-1-1.

Functions.

Transfer from other boards and commissions, §49-2-3.

Members, §49-2-2.

Sales to institutions prohibited, §49-1-4.

Powers.

Federal aid.

Avoidance of loss of federal funds, §49-5-7.

Removal of members, §49-2-2.

Sales to institutions by members prohibited, §49-1-4.

Transfer of functions from other boards and commissions, §49-2-3.

Vacancies, §49-2-2.

Child care licensing.

Inspection warrants for residential child care licensing, §§49-2-20 to 49-2-25.

HUMAN SERVICES —Cont'd

Commissioner of human services, §49-2-1.

County boards.

Appointment of members, §49-3-2.

County departments.

Transfer of employees.

Power of commissioner, §49-3-4.

Definition of commissioner, §49-1-1.

Economic rehabilitation services.

Administration of provisions,
§49-8-4.

Council for welfare administration, §49-2-16.

Department of human services.

Background checks on adults that will have contact with children in department custody, §49-2-14.

Child care licensing.

Inspection warrants for residential child care licensing, §§49-2-20 to 49-2-25.

Contracts with private agencies serving children in custody of department.

Incorporation of foster parents' bill of rights, §49-5-281.

County departments.

Delegation of functions to, §49-3-6.

Creation, §49-2-1.

Crime information center.

Background checks on employees and adults that will have contact with children in department custody, §49-2-14.

Day-care centers.

Employees' records checks.

Administration of provisions,
§49-5-74.

Definition of department, §49-1-1.

Public assistance, §49-4-2.

Department of human resources.

Successor-in-interest to rights, duties and obligations of former department of human resources, §49-2-2.1.

Transfer of powers, functions, and duties from department of human resources, §49-2-1.

Disciplinary actions against licensees or license applicants regulated by, §49-2-17.

Divisions.

Creation, §49-2-4.

Functions.

Allocation, §49-2-4.

INDEX

HUMAN SERVICES —Cont'd

Department of human services

—Cont'd

- Duties, §§49-2-6, 49-4-3.
 - Aid to the blind, §49-4-53.
 - Aid to the disabled, §49-4-82.
 - Old-age assistance, §49-4-33.
 - Transfer from other state agencies, §49-2-7.
- Economic rehabilitation services.
 - General provisions, §§49-8-1 to 49-8-6.
- Elderly and disabled persons.
 - Identifying transportation needs and alternatives to meet them, §49-2-13.
- Emergency protection of children in certain institutions, §§49-5-90 to 49-5-92.
- Employees.
 - Conviction data on prospective employees.
 - Record search for, §49-2-14.
- Family-planning services.
 - General provisions, §§49-7-1 to 49-7-9.
- Functions.
 - Divisions.
 - Allocation of functions, §49-2-4.
 - Transfer from other state agencies, §49-2-7.
- Home studies.
 - Background checks on adults that will have contact with children in department custody, §49-2-14.
- Nonprofit corporations.
 - Transfer of assets to department, §49-1-6.
- Notice.
 - Pendency of action.
 - Service of notice against department, §49-2-15.
- Powers, §§49-2-5, 49-2-6, 49-4-3.
 - Funds, §49-2-9.
 - Public assistance, §49-4-16.
 - Transfer from other state agencies, §49-2-7.
- Public assistance.
 - Categories of public assistance.
 - Establishment, §49-4-3.
 - Definition of department, §49-4-2.
 - Duties, §49-4-3.
 - Powers, §§49-4-3, 49-4-16.
 - Review of decisions of county departments, §49-4-12.

HUMAN SERVICES —Cont'd

Department of human services

—Cont'd

- Public assistance —Cont'd
 - Social assistance register, §49-4-19.
- Rules and regulations.
 - County departments.
 - Compliance with rules and regulations of department, §49-1-2.
- Status.
 - Institution of state, §49-2-5.
- Successor-in-interest to rights, duties and obligations of former department of human resources, §49-2-2.1.
- Suspension and removal of employee or official by governor, §49-1-5.
- Transfer of functions, duties and authority from other state agencies, §49-2-7.
- Transfer of powers, functions, and duties from department of human resources, §49-2-1.
- Transportation for elderly and disabled persons.
 - Generally, §§49-2-12 to 49-2-13.1.
- Family caregiver support**, §§49-6-70 to 49-6-77.
- Grievance procedures for foster parents**, §49-5-281.
- Home studies**.
 - Department of human services.
 - Background checks on adults that will have contact with children in department custody, §49-2-14.
- Welfare administration council**, §49-2-16.
- Youth services**.
 - General provisions, §§49-5-1 to 49-5-23.

I

IMMUNITY.

Child abuse and neglect.

- Central child abuse registry, §49-5-187.
- Records.
 - Access to or disclosure of records.
 - Department or agency not liable, §49-5-46.

Day-care centers.

- Employees' records checks, §49-5-71.

INDEX

- IMMUNITY** —Cont'd
Department of human services.
Actions taken under color of law,
§49-2-17.
- Minors.**
Record checks for persons supervising
children, §49-5-113.
- IN CAMERA.**
**Child abuse and dependency
records.**
Examination in camera, §49-5-41.
- Child abuse reports,** §49-5-41.
- INCORRIGIBLE CHILDREN.**
Adoption, §49-5-15.
- INFANTS.**
**Children and adolescents with
severe emotional problems.**
General provisions, §§49-5-220 to
49-5-227.
- Delinquent prevention and
community-based services,**
§§49-5-150 to 49-5-155.
- Emergency protection of children in
certain institutions,** §§49-5-90 to
49-5-92.
- Emotional problems.**
Children and adolescents with severe
emotional problems, §§49-5-220 to
49-5-227.
- PeachCare for Kids act,** §§49-5-270 to
49-5-273.
- Record checks for persons
supervising children,** §§49-5-110
to 49-5-114.
- INJUNCTIONS.**
Child care.
Residential child care licensing,
inspection warrants.
Violations of provisions, §49-2-25.
- Child welfare agencies.**
Operating without license, §49-5-12.
- Medicaid.**
Fraud.
Forfeiture of property and proceeds
obtained through.
Powers of court in conjunction
with civil action, §49-4-146.3.
- IN LOCO PARENTIS.**
Child welfare agencies.
Licensing, §49-5-12.
- Youth services.**
Defined, §49-5-3.
- IN LOCO PARENTIS** —Cont'd
Youth services —Cont'd
Department of human services.
Powers and duties as to adoption
services, §49-5-8.
- IN PERSONAM ACTIONS.**
Medicaid fraud.
Forfeiture of property and proceeds
obtained through, §49-4-146.3.
- IN REM ACTIONS.**
Medicaid fraud.
Forfeiture of property and proceeds
obtained through, §49-4-146.3.
- INSPECTIONS.**
Adult day care centers, §49-6-85.
- Child care licensing.**
Inspection warrants for residential
child care licensing, §§49-2-20 to
49-2-25.
- Child welfare agencies,** §49-5-12.
- Department of human services.**
Actions against applicants or licensees,
powers of department, §49-2-17.
- Runaway children.**
Registration of organizations providing
services to youth.
Facilities, inspection, §49-5-163.
- Youth services.**
Department of human services.
Public and private institutions,
§49-5-9.
- INSPECTION WARRANTS.**
Residential child care licensing,
§§49-2-20 to 49-2-25.
Contents of warrant, §49-2-23.
Definitions, §49-2-20.
Evidence inadmissible in criminal
proceedings, §49-2-24.
Injunctions, §49-2-25.
Issuance.
Procedure, §49-2-22.
Validity, requirements, §49-2-23.
Who may obtain, §49-2-21.
- INSURANCE.**
Accident and sickness insurance.
Long-term care partnership program,
§§49-4-160 to 49-4-165.
- Health insurance.**
Accident and sickness insurance.
Long-term care partnership
program, §§49-4-160 to
49-4-165.
Long-term care partnership program,
§§49-4-160 to 49-4-165.

INDEX

INSURANCE —Cont'd

Long-term care partnership program, §§49-4-160 to 49-4-165.

Medicaid.

Subrogation of department to recipients' insurance claims, §49-4-149.

Qualified long-term care partnership program, §§49-4-160 to 49-4-165.

Runaway children.

Registration of organizations providing services to youth.

Proof of liability insurance coverage, 49-5-162.

Vocational rehabilitation.

Georgia vocational rehabilitation agency.

Subrogation to rights of covered person, §49-9-15.

INTEREST.

Medicaid.

Department of community health.

Noneligibility to obtain or be liable for certain interest, §49-4-147.2.

INTERPRETATION AND CONSTRUCTION.

Day-care centers.

Employees' records checks.

Supplemental nature of requirements, §49-5-72.

Family-planning services.

Liberal construction of provisions, §49-7-9.

Medicaid.

Federal social security act.

Construction of provisions with federal act, §49-4-157.

Temporary assistance for needy families, §49-4-190.

INTERVENTION.

Medicaid, false claims.

Actions by private persons, intervention by attorney general, §§49-4-168.2, 49-4-168.3.

Youth services.

Commissioner of human services.

Instituting or intervening in legal proceedings, §49-5-18.

INVENTORIES.

Medicaid.

Fraud.

Forfeiture of property and proceeds obtained through, §49-4-146.3.

INVESTIGATIONS.

Child welfare agencies, §49-5-12.

Department of human services.

Actions against applicants or licensees, powers of department, §49-2-17.

Foster family homes.

Investigation of home and character of persons residing in home.

Duty of child-placing agencies, §49-5-12.

Medicaid.

Department of community health.

Violations of provisions, §49-4-146.1.

Obtaining information for investigations, §49-4-151.

Runaway children.

Registration of organizations providing services to youth.

Problems with facility or organization, §49-5-163.

INVESTMENTS.

Welfare.

Applications for public assistance, §49-4-9.

J

JOINT BOARD OF FAMILY

PRACTICE, §§49-10-1 to 49-10-4.

Compensation of members, §49-10-1.

Composition, §49-10-1.

Duties, §49-10-3.

Locating areas of state needing family physicians, §49-10-3.

Officers, §49-10-1.

Powers, §49-10-3.

Authority to adopt rules and regulations, §49-10-4.

Contracts, §49-10-4.

Purpose, §49-10-2.

Quorum, §49-10-1.

Staff, §49-10-1.

Terms of members, §49-10-1.

University system of Georgia.

Joint board of attached to board of regents, §49-10-1.

Vacancies, §49-10-1.

JUDGMENTS.

Medicaid.

Interest on judgments.

Department of community health.

Noneligibility to obtain or be liable for interest on judgments, §49-4-147.2.

JURISDICTION.

Medicaid, false claims.

Original source requirement,
§49-4-168.2.

JUVENILE COURTS.

Delinquency prevention and community-based services, §§49-5-150 to 49-5-155.

Department of juvenile justice.

Effect of provisions on, §49-5-155.

Federal aid.

Recipient entity for federal grants,
§49-5-155.

Implementation of provisions,
§49-5-151.

Legislative declaration, §49-5-150.

Local advisory groups, §49-5-154.

Policy of state, §49-5-150.

Purchase of care or services from
public or private agencies,
§49-5-152.

Reports.

Annual report, §49-5-153.

Study of youth needs, §49-5-154.

Delinquent children.

Juvenile justice department.

Commitment to department,
§49-4A-8.

Youth services.

Commitment to department.

Defined, §49-5-3.

Governor's office for children and families, §§49-5-130 to 49-5-135.

Youth services.

Delinquent child or youth defined,
§49-5-3.

JUVENILE DETENTION FACILITIES.

Acceptance of child for detention, §49-4A-7.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Contraband.

Taking prohibited items into juvenile
detention facilities, §49-4A-17.

Delinquent children.

Acceptance of child for detention,
§49-4A-7.

Escape.

Aiding or encouraging escape,
§49-4A-11.

Consequences for escape from juvenile
detention facility, §49-4A-10.

Hindering apprehension, §49-4A-11.

JUVENILE DETENTION

FACILITIES —Cont'd

Guard lines.

Establishment, §49-4A-15.

Weapons, intoxicants and other
contraband, crossing or passing
guard lines, §49-4A-16.

Juvenile justice department.

Role of department to administer,
supervise, etc, facilities,
§§49-4A-4, 49-4A-5.

Rulemaking to govern, operate, administer, etc, facilities.

Board's role, §49-4A-6.

JUVENILE JUSTICE, §§49-4A-1 to 49-4A-18.

Aging out.

Delinquent children committed to
department.

Discharge from custody at 21st
birthday, §49-4A-8.

Apparel.

Compensation for damage to apparel
by youth under custody of
department, §49-4A-14.

Board of juvenile justice, §49-4A-2.

Rules and regulations, §49-4A-6.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Commissioner of juvenile justice, §49-4A-3.

Confidentiality of information.

Delinquent children.

Commitment to department of
juvenile justice.

Use of records, §49-4A-8.

Delinquent or unruly children.

Commitment to department of
juvenile justice.

Use of records, §49-4A-8.

Contraband.

Guard lines at juvenile detention
facilities.

Contraband items, crossing line
with, §49-4A-16.

Possession of prohibited items by
juvenile detainee, §49-4A-18.

Taking prohibited items into juvenile
detention facilities, §49-4A-17.

Definitions, §49-4A-1.

Delinquent children.

Acceptance of child for detention,
§49-4A-7.

Commitment, §49-4A-8.

INDEX

JUVENILE JUSTICE —Cont'd

Department of juvenile justice.

Apparel.

Compensation for damage to apparel by youth under custody of department, §49-4A-14.

Board of juvenile justice, §49-4A-2.

Rules and regulations, §49-4A-6.

Creation, §49-4A-3.

Delinquency prevention and community-based services.

Effect of provisions on department, §49-5-155.

Delinquent children.

Commitment to department, §49-4A-8.

Detention facilities.

Acceptance of child for detention, §49-4A-7.

Department's role to administer, supervise, etc, juvenile detention facilities, §§49-4A-4, 49-4A-5.

Rulemaking to govern, operate, administer, etc, facilities.

Board's role, §49-4A-6.

Duties, §§49-4A-3, 49-4A-5, 49-4A-7.

Employees.

Transfer from division of youth services, §49-4A-5.

Personnel matters, §49-4A-5.

Powers, §49-4A-7.

Probation.

Delinquent children.

Powers and duties of department, §49-4A-7.

Runaway children.

Powers and duties of department, §49-4A-7.

Special school district.

Designation, §49-4A-12.

Detention facilities.

Acceptance of child for detention, §49-4A-7.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Contraband.

Taking prohibited items into juvenile detention facilities, §49-4A-17.

Department's role to administer, supervise, etc, juvenile detention facilities, §§49-4A-4, 49-4A-5.

Escape.

Aiding or encouraging escape, §49-4A-11.

JUVENILE JUSTICE —Cont'd

Detention facilities —Cont'd

Escape —Cont'd

Consequences for escape from juvenile detention facility, §49-4A-10.

Hindering apprehension, §49-4A-11.

Guard lines.

Establishment, §49-4A-15.

Weapons, intoxicants and other contraband, crossing or passing guard lines, §49-4A-16.

Rulemaking to govern, operate, administer, etc, facilities, §49-4A-6.

Developmental disabilities.

Delinquent children committed to department found to be mentally ill or developmentally disabled.

Return to original court for appropriate disposition, §49-4A-8.

Escape.

Aiding or encouraging child to escape, §49-4A-11.

Consequences for escape from juvenile detention facility, §49-4A-10.

Delinquent children committed to department, §49-4A-8.

Hindering apprehension of child, §49-4A-11.

Family attention home, §49-4A-13.

Felonies.

Delinquent children committed to department.

Release of felon, notifications, §49-4A-8.

Sentence of felony convict to custody of department, §49-4A-9.

Guard lines at juvenile detention facilities.

Contraband items, crossing line with, §49-4A-16.

Establishment, §49-4A-15.

Mental health.

Delinquent children committed to department found to be mentally ill or developmentally disabled.

Return to original court for appropriate disposition, §49-4A-8.

Parks, camps, etc.

Delinquent children committed to department.

Operation of or placement of children in parks, camps, etc, §49-4A-8.

INDEX

JUVENILE JUSTICE —Cont'd

Possession of prohibited items by juvenile detainee, §49-4A-18.

Prisons and prisoners.

Transfer of felony convicts in custody of juvenile justice department to corrections department when juvenile facilities unavailable, §49-4A-9.

Probation.

Delinquent children.

Powers and duties of department, §49-4A-7.

Restitution.

Delinquent children.

Payment of restitution, §49-4A-8.

Runaway children.

Powers and duties of department, §49-4A-7.

School district.

Department as special school district, §49-4A-12.

Supervision, release under.

Delinquent children committed to department, §49-4A-8.

K

KINDERGARTENS.

Toilets.

Privacy screening, §49-5-22.

KNIVES.

Juvenile justice.

Guard lines, crossing with prohibited items, §49-4A-16.

Possession of prohibited items by juvenile detainee, §49-4A-18.

L

LABOR AND INDUSTRIAL RELATIONS.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency, §§49-9-1 to 49-9-42.

LEARNFARE PROGRAM.

Temporary assistance for needy families.

Pilot program, §49-4-192.

LIABILITY.

Child abuse.

Central child abuse registry.

Unauthorized use of information.

Immunity from civil or criminal liability, §49-5-187.

Records.

Permitted access to persons and agencies.

Liability of department or agency, §49-5-46.

Children and youth services.

Employees' records checks for day-care centers.

Immunity from liability for centers.

State agencies and employees, §49-5-72.

Employees' records checks for day-care centers.

Immunity from liability for centers, state agencies and employees, §49-5-71.

Medical assistance.

Department of community health.

Interest on orders, judgments and liquidated or unliquidated amounts.

Noneligibility to obtain or be liable for, §49-4-147.2.

LIABILITY INSURANCE.

Runaway children.

Registration of organizations providing services to youth.

Proof of liability insurance coverage, 49-5-162.

LICENSES.

Adoption.

License or commission required to place child for adoption, §49-5-12.

Adult day care centers, §§49-6-80 to 49-6-86.

Child welfare agencies, §49-5-12.

LIENS.

Medicaid.

Enforcement of liens against assistance, §49-4-147.

Fraud.

Forfeiture of property and proceeds obtained through, §49-4-146.3.

INDEX

LIENS —Cont'd

Medicaid —Cont'd

Third parties.

Lien of department against,
§49-4-149.

Vocational rehabilitation services.

Georgia vocational rehabilitation
agency.

Lien upon causes of action for
damages, §49-9-16.

LIFE IMPRISONMENT.

Minors.

Committal of person under 17,
§49-4A-9.

LIMITATION OF ACTIONS.

Medicaid.

False claims.

Actions by private persons or by
attorney general, §49-4-168.5.

Retaliation against employee for
pursuing action, relief for,
§49-4-168.4.

Filing claims for assistance, §49-4-148.

Fraud.

Forfeiture of property and proceeds
obtained through, §49-4-146.3.

LONG-TERM CARE PARTNERSHIP PROGRAM ACT.

General provisions, §§49-4-160 to
49-4-165.

Short title, §49-4-160.

LONG-TERM HEALTH CARE.

Long-term care partnership program.

Asset disregard.

Assets to be disregarded, §49-4-162.

Defined, §49-4-161.

Eligibility, §49-4-163.

Notice to consumers, §49-4-165.

Definitions, §49-4-161.

Establishment, §49-4-162.

Notice to consumers, §49-4-165.

Purposes, §49-4-162.

Reciprocal agreements to extend asset
disregard, §49-4-163.

Reports, §49-4-164.

Rulemaking, §49-4-164.

Sale of qualified long-term care
policies.

Requirements, §49-4-164.

Short title, §49-4-160.

**Qualified long-term care partnership
program**, §§49-4-160 to 49-4-165.

LONG-TERM HEALTH CARE

—Cont'd

Rulemaking authority.

Long-term care partnership program,
§49-4-164.

M

MARIJUANA.

Juvenile drug use records,

§§49-5-41.1, 49-5-45, 49-5-46.

Juvenile justice.

Guard lines, crossing with prohibited
items, §49-4A-16.

Possession of prohibited items by
juvenile detainee, §49-4A-18.

MARRIAGE AND FAMILY THERAPISTS.

Runaway and homeless youth.

Registration of organizations providing
services to.

Employment by organization of
licensees, 49-5-160.

MATERNITY HOMES.

Civil penalty.

Violations of laws and regulations,
§49-5-12.1.

Criminal record.

Owners with prohibited from
operating, §49-2-14.1.

Criminal record check.

Owners, §49-2-14.1.

Defined, §49-5-3.

Licensing and inspection, §49-5-12.

Separate license for each facility,
§§49-5-61, 49-5-66.

Recall notices on unsafe child and infant products.

Agencies to make available, posting
phone number and website of U.S.
consumer product safety
commission, §49-5-23.

Regulation by department of human services, §49-5-8.

Separate director for each facility,
§§49-5-61, 49-5-66.

MEALS.

Home delivered meals.

Transportation services for the elderly
and preschool children with
special needs fund, §49-1-7.

Welfare.

Home delivered meals, §49-1-7.

INDEX

MEDICAID, §§49-4-140 to 49-4-157.

Action for fraud.

Forfeiture of property and proceeds obtained through, §49-4-146.3.

Appeals.

Administrative hearings and appeals, §49-4-153.

Judicial review, §49-4-153.

Assignments.

Claims of recipients' to medical care from third party.

Assignment to department, §49-4-149.

Restrictions on transfer or assignment, §49-4-147.

Audits.

Obtaining information for audit, §49-4-151.

Board of community health.

Compensation of members, §49-4-143.

Creation, §49-4-143.

Definition of board, §49-4-141.

Members, §49-4-143.

Quorum, §49-4-143.

Records.

Regulations as to maintenance and use, §49-4-150.

Terms of office, §49-4-143.

Vacancies, §49-4-143.

Burden of proof.

Forfeiture of property and proceeds obtained through fraud.

Proof that the property is subject to forfeiture, §49-4-146.3.

Children eligible for services under the early periodic screening, diagnostic and treatment program.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

Definitions, §49-4-169.1.

Legislative findings and intent, §49-4-169.

Prior approval, §49-4-169.3.

Services and treatment received, §49-4-169.2.

Utilization review, §49-4-169.3.

Citation of act.

Short title, §49-4-140.

Claims for assistance.

Department of community health.

Time for action on claim, §49-4-146.

False Medicaid claims, §§49-4-168 to 49-4-168.6.

MEDICAID —Cont'd

Claims for assistance —Cont'd

Form, §49-4-145.

Limitation of actions for filing claims, §49-4-148.

Third party claims, §49-4-148.

Time for action on claim, §49-4-146.

Time limitations, §49-4-145.

Unlawful acts, §49-4-146.1.

Commissioner of community public health.

Appointment, §49-4-144.

Creation of position, §49-4-144.

Definition of commissioner, §49-4-141.

Duties, §49-4-144.

Information for investigations and audits.

Obtaining, §49-4-151.

Confidentiality of information.

Records.

Restrictions on use of information, §49-4-150.

Decedents' estates.

Claims by department against estate of recipient, §49-4-147.1.

Definitions, §§49-4-141, 49-4-146.1, 49-4-146.3.

Department of community health.

Claims against estates of medicaid recipients, §49-4-147.1.

Claims for assistance.

Time for action on claim, §49-4-146.

Community care and services for the elderly.

Reimbursement for services rendered under provisions, §49-4-156.1.

Creation, §49-4-142.

Definition of department, §§49-4-141, 49-4-147.2.

Duties, §49-4-154.

Family supplementation of medicaid payments.

Submission of plan upon federal removal of restrictions, §49-4-149.1.

Interest.

Noneligibility to obtain or be liable for certain interest, §49-4-147.2.

Powers and duties retained by department, §49-4-154.

Research and demonstration projects, §49-4-152.

Rules and regulations.

Succession to existing rules and regulations, §49-4-155.

INDEX

MEDICAID —Cont'd

Department of community health

—Cont'd

State plan.

Adoption, administration and
modification of plan, §49-4-142.

Subrogation.

Recipients' insurance claims,
§49-4-149.

Third party liability as to payment
of medical assistance, §49-4-148.

Succession to existing rules,
regulations, policies, procedures
and administrative orders,
§49-4-155.

Third parties.

Lien against third parties,
§49-4-149.

Violations of provisions.

Investigation and notification of
proper authorities, §49-4-146.1.

Waiver requests.

Legislative notification, §49-4-142.1.

Drugs.

Controlled medical assistance drug
list.

Rebates for sole-source and
multiple-source drugs included
in, §49-4-152.2.

Prescription drug bidding and rebate
program, §49-4-152.1.

Refund of prescription drug rebates.
Department contracts to require,
§49-4-152.4.

Refund of prescription drug rebates.
Department contracts to require,
§49-4-152.4.

Restocking fees, §49-4-152.5.

Reuse of unit dosage drugs,
§49-4-152.3.

Early periodic screening, diagnostic and therapy (EPSDT) program.

Therapy services for children eligible
for services under, §§49-4-169 to
49-4-169.3.

Definitions, §49-4-169.1.

Legislative findings and intent,
§49-4-169.

Prior approval, utilization review,
§49-4-169.3.

Services and treatment received,
§49-4-169.2.

Exemptions from levy and sale, §49-4-147.

MEDICAID —Cont'd

False claims, §§49-4-168 to 49-4-168.6.

Actions by private persons or by
attorney general, §§49-4-168.2,
49-4-168.3.

Retaliation against employee for
pursuing action, §49-4-168.4.

Standard of proof, §49-4-168.3.

Statute of limitations, §49-4-168.5.

Venue, §49-4-168.6.

Civil penalties, §49-4-168.1.

Definitions, §49-4-168.

Retaliation against employee for
pursuing action, relief,
§49-4-168.4.

Family supplementation of medicaid payments.

Department of community health.

Submission of plan upon federal
removal of restrictions,
§49-4-149.1.

Fees.

Drug application fees, §49-4-142.

Forfeiture of property and proceeds.

Medicaid fraud, §49-4-146.3.

Fraud, §49-4-15.

False claims, §§49-4-168 to 49-4-168.6.

Financial records.

Examination in instances of alleged
fraud, §49-4-15.1.

Forfeiture of property and proceeds
obtained through, §49-4-146.3.

Unlawful acts, §49-4-146.1.

Garnishment.

Exemption, §49-4-147.

Health benefit plan insurers.

Cooperation in determining if recipient
is entitled to coverage, §49-4-148.

Limitation of time for filing claims,
§49-4-148.

Health care coverage pilot projects.

Authority to establish, §49-4-152.

Injunctions.

·Fraud.

Forfeiture of property and proceeds
obtained through.

Powers of court in conjunction
with civil action, §49-4-146.3.

Insurance.

Subrogation of department to
recipients' insurance claims,
§49-4-149.

Interest.

Department of community health.

Noneligibility to obtain or be liable
for certain interest, §49-4-147.2.

INDEX

MEDICAID —Cont'd

Interpretation and construction.

- Federal social security act.
- Construction of provisions with federal act, §49-4-157.

Inventories.

- Fraud.
- Forfeiture of property and proceeds obtained through, §49-4-146.3.

Investigations.

- Department of community health.
- Violations of provisions, §49-4-146.1.
- Obtaining information for investigations, §49-4-151.

Judgments.

- Interest.
- Department of community health.
- Noneligibility to obtain or be liable for interest on judgments, §49-4-147.2.

Liens.

- Enforcement of liens against assistance, §49-4-147.
- Fraud.
- Forfeiture of property and proceeds obtained through, §49-4-146.3.
- Third parties.
- Lien of department against, §49-4-149.

Limitation of actions for filing claims, §49-4-148.

Long-term care partnership program, §§49-4-160 to 49-4-165.

Nursing facilities.

- Provider agreements.
- Voluntary termination, §49-4-146.2.
- Remedial or punitive measure against nursing facility.
- Contested cases involving imposition, §49-4-153.

Occupational therapy.

- Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

PeachCare for Kids act, §§49-5-270 to 49-5-273.

Pharmacy assistance pilot programs.

- Authority to establish, §49-4-152.

Physical therapy.

- Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

MEDICAID —Cont'd

Prescription drug bidding and rebate program, §49-4-152.1.

- Refund of prescription drug rebates.
- Department contracts to require, §49-4-152.4.

Providers.

- Defined, §49-4-146.1.
- Termination, §49-4-146.1.
- Reinstatement, §49-4-146.1.
- Voluntary termination of nursing facility, §49-4-146.2.
- Unlawful acts, §49-4-146.1.

Records.

- Regulations as to maintenance and use, §49-4-150.
- Use of information.
- Restrictions, §49-4-150.

Research and demonstration projects, §49-4-152.

Rules and regulations.

- Department of community health.
- Succession to existing rules and regulations, §49-4-155.

Records.

- Maintenance and use, §49-4-150.

Searches and seizures.

- Fraud.
- Property subject to forfeiture for, §49-4-146.3.

Service of process.

- Subpoenas.
- Information for investigations and audits, §49-4-151.

Social security.

- Construction of provisions with federal act, §49-4-157.

Speech therapy.

- Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

State plan.

- Defined, §49-4-141.
- Department of community health.
- Adoption, administration and modification of plan, §49-4-142.

Subpoenas.

- Information for investigations and audits, §49-4-151.

Subrogation.

- Department of community health.
- Subrogation to recipients' insurance claims, §49-4-149.
- Third party liability as to payment of medical assistance, §49-4-148.

INDEX

MEDICAID —Cont'd

Third parties.

Defined, §49-4-141.

Lien of department against third parties, §49-4-149.

Recovery of assistance from third party liable for sickness, injury, disease or disability, §49-4-148.

Title of act.

Short title, §49-4-140.

Waiver requests.

Legislative notification, §49-4-142.1.

MEDICAL ASSISTANCE ACT OF 1977.

Georgia medical assistance act of 1977.

General provisions, §§49-4-140 to 49-4-157.

Short title, §49-4-140.

MEDICAL EXAMINERS.

Central child abuse registry.

Access to confidential information, §49-5-185.

MEDICAL RECORDS.

Child abuse and deprivation records.

General provisions, §§49-5-40 to 49-5-46.

MENTAL HEALTH.

Children and adolescents with severe emotional problems, §§49-5-220 to 49-5-227.

Juvenile justice department.

Delinquent children committed to department found to be mentally ill or developmentally disabled.

Return to original court for appropriate disposition, §49-4A-8.

Minors.

Children and adolescents with severe emotional problems, §§49-5-220 to 49-5-227.

MENTORS.

Georgia mentoring program, §49-5-156.

MINORS.

Background investigations.

Persons supervising children, §§49-5-110 to 49-5-114.

Central child abuse registry, §§49-5-180 to 49-5-187.

MINORS —Cont'd

Children and adolescents with severe emotional problems, §§49-5-220 to 49-5-227.

Commissioner of behavioral health and developmental disabilities.

Reports.

Annual reports, §49-5-224.

Coordinated system of care.

Defined, §49-5-221.

Guiding principles, §49-5-222.

State plan, §49-5-221.

Comment.

Governor's office for children and families, §49-5-227.

Contents, §49-5-223.

Defined, §49-5-221.

Implementation date, §49-5-223.

Updating, §49-5-223.

Definitions, §49-5-221.

Governor's office for children and families.

Comment on state plan and provision of recommendations, §49-5-227.

Guiding principles for coordinated system of care, §49-5-222.

Legislative declaration, §49-5-220.

Local interagency children's committees.

Defined, §49-5-221.

Functions, §49-5-225.

Membership, §49-5-225.

Out-of-state placement for treatment, §49-5-226.

Placement out of state for treatment, §49-5-226.

Reports.

Commissioner of behavioral health and developmental disabilities.

Annual reports, §49-5-224.

State plan, §49-5-220.

Comment, §49-5-227.

Contents, §49-5-223.

Defined, §49-5-221.

Implementation date, §49-5-223.

Updating, §49-5-223.

Criminal history records checks.

Persons supervising children, §§49-5-110 to 49-5-114.

Definitions.

Children and adolescents with severe emotional problems, §49-5-221.

Emergency protection of children in certain institutions, §49-5-90.

INDEX

MINORS —Cont'd

Definitions —Cont'd

Record checks for persons supervising children, §49-5-110.

Delinquency prevention and community-based services, §§49-5-150 to 49-5-155.

Department of juvenile justice.

Effect of provisions on, §49-5-155.

Federal aid.

Recipient entity, §49-5-155.

Implementation of provisions,
§49-5-151.

Local advisory groups, §49-5-154.

Purchase of care or services from
public or private agencies,
§49-5-152.

Reports.

Annual report, §49-5-153.

Study of youth needs, §49-5-154.

Emergency protection of children in certain institutions, §§49-5-90 to 49-5-92.

Definitions, §49-5-90.

Interim department actions, §49-5-92.

Monitors, §49-5-91.

Defined, §49-5-90.

Orders, §49-5-92.

Corrective orders, §49-5-91.

Defined, §49-5-90.

Emergency orders, §49-5-91.

Defined, §49-5-90.

Preliminary hearing, §49-5-92.

Defined, §49-5-90.

Emotional problems.

Children and adolescents with severe
emotional problems, §§49-5-220 to
49-5-227.

Georgia mentoring program, §49-5-156.

Governor's office for children and families, §§49-5-130 to 49-5-135.

Immunity.

Record checks for persons supervising
children, §49-5-113.

Life imprisonment.

Committal of person under 17,
§49-4A-9.

Medicaid.

Therapy services for children with
disabilities, §§49-4-169 to
49-4-169.3.

Mental health or illness.

Children and adolescents with severe
emotional problems, §§49-5-220 to
49-5-227.

MINORS —Cont'd

Occupational, speech or physical therapy.

Therapy services for children with
disabilities, §§49-4-169 to
49-4-169.3.

Orders.

Emergency protection of children in
certain institutions, §§49-5-90 to
49-5-92.

PeachCare for Kids act, §§49-5-270 to 49-5-273.

Persons supervising children.

Record checks, §§49-5-110 to 49-5-114.

Record checks for persons supervising children, §§49-5-110 to 49-5-114.

Authorized, §49-5-111.

Cumulative of and in addition to other
laws, §49-5-114.

Definitions, §49-5-110.

Disciplinary action, §49-5-113.

False information.

Penalty, §49-5-112.

Immunity, §49-5-113.

Law enforcement agencies.

Cooperation, §49-5-112.

Other laws requiring checks.

Applicability, §49-5-114.

Procedure, §49-5-111.

Reports.

Children and adolescents with severe
emotional problems.

Commissioner of behavioral health
and developmental disabilities.
Annual report, §49-5-224.

Delinquency prevention and
community-based services.

Annual report, §49-5-153.

Runaway children.

Registration of organizations providing
services to youth, §§49-5-160 to
49-5-164.

Sentencing.

Person under 17 convicted of felony,
§49-4A-9.

Sentencing certain juveniles, §49-4A-9.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

Youth services.

General provisions, §§49-5-1 to
49-5-23.

INDEX

MISDEMEANORS.

Adoption.

Placing child for adoption without license or commission, §49-5-12.

Child abuse and neglect.

Central child abuse registry.

Unauthorized use of information, §49-5-186.

Records.

Allowing unauthorized access to juvenile drug use records, §49-5-45.

Unauthorized access, §49-5-44.

Child welfare agencies.

Operation without license or commission, §49-5-12.

Violations of laws and regulations, §49-5-12.1.

Day-care centers.

Employees' records checks.

Employment requirements.

Violations, §49-5-69.

Foster parents known to have criminal records.

Use, §49-5-69.1.

Medicaid.

Fraud, §49-4-15.

Vocational rehabilitation services.

Confidentiality violations, §49-9-18.

Welfare.

Fraud, §49-4-15.

Public assistance.

Records.

Use or disclosure of information, §49-4-14.

MOBILE TELEPHONES.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

MONITORS.

Emergency protection of children in certain institutions, §49-5-91.

MULTI-SOURCE DRUGS.

Medicaid.

Controlled medical assistance drug list.

Rebates for multiple-source drugs included in, §49-4-152.2.

Prescription drug bidding and rebate program.

Election by department not to reimbursement for manufacturer which does not participate in, §49-4-152.1.

MURDER.

Sentencing.

Sentencing certain juveniles, §49-4A-9.

N

NONASSIGNABILITY.

Blind and visually impaired persons.

Aid to the blind, §49-4-58.

Disabled persons.

Aid to the disabled, §49-4-84.

Medicaid.

Restrictions on assignment, §49-4-147.

Old-age assistance, §49-4-35.

NONPROFIT CORPORATIONS.

Welfare.

Transfer of assets to department of human services, §49-1-6.

NOTICE.

Adoption.

Interstate compact on placement of children.

Requirements where child brought into state, §49-5-15.

Child abuse and neglect registry.

Alleged child abuser.

Notice of classification to, §49-5-183.1.

Notification of individual listed in registry, §49-5-181.

Long-term health care.

Long-term care partnership program.

Asset disregard, notice to consumers as to, §49-4-165.

Temporary assistance for needy families.

Drug testing of applicants and recipients, §49-4-193.

Youth services.

Adoption.

Child brought into state for placement or adoption, §49-5-15.

NOTICE OF APPEAL.

Medical assistance.

Denial or termination of enrollment, §49-4-153.

NURSES.

Runaway and homeless youth.

Registration of organizations providing services to youth.

Employment by organization of licensees, 49-5-160.

INDEX

NURSING HOMES.

Long-term care partnership program.

General provisions, §§49-4-160 to 49-4-165.

Qualified long-term care partnership program.

General provisions, §§49-4-160 to 49-4-165.

O

OASDI PROGRAM.

Public assistance.

Amounts paid by social security administration under program.

Not considered child support for purpose of applying child support disregard, §49-4-6.

OCCUPATIONAL THERAPY.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

OLD-AGE ASSISTANCE ACT.

General provisions, §§49-4-30 to 49-4-38.

Short title, §49-4-30.

OLD AGE SURVIVORS AND DISABILITY INSURANCE (OASDI) PROGRAM.

Amounts paid by social security administration under program.

Not considered child support for purpose of applying child support disregard, §49-4-6.

OPHTHALMOLOGISTS.

Blind persons.

Aid to the blind.

Examination of applicant by ophthalmologist or optometrist, §49-4-55.

Reexamination, §49-4-56.

ORDERS.

Medicaid fraud.

Forfeiture of property and proceeds obtained through.

Powers of court in connection with proceedings, §49-4-146.3.

Minors.

Emergency protection of children in certain institutions, §§49-5-90 to 49-5-92.

OVERPAYMENTS.

Welfare.

Public assistance act.

Recovery of overpayments, §49-4-15.

P

PANHANDLING.

Blind persons, §49-4-52.

PARDONS AND PAROLES.

Temporary assistance for needy families.

Violation of condition of parole.

Ineligibility for assistance, §49-4-184.

PARENT AND CHILD.

Family-planning services.

General provisions, §§49-7-1 to 49-7-9.

Temporary assistance for needy families.

Parent ineligible due to positive drug test.

Effect on eligibility of child, §49-4-193.

PEACHCARE FOR KIDS ACT,

§§49-5-270 to 49-5-273.

Definitions, §49-5-272.

Eligibility, §49-5-273.

Establishment of program, §49-5-273.

Legislative findings, §49-5-271.

Payment of premiums, §49-5-273.

Purpose, §49-5-271.

Reports, §49-5-273.

Short title, §49-5-270.

PENALTIES.

Child welfare agencies.

Violations of laws and regulations.

Civil penalty, §49-5-12.1.

Juvenile justice.

Aiding or encouraging child to escape, §49-4A-11.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Guard lines.

Crossing with prohibited items, §49-4A-16.

Hindering apprehension of child, §49-4A-11.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Taking prohibited items into juvenile detention facilities, §49-4A-17.

Medicaid.

False claims, §49-4-168.1.

INDEX

PENALTIES —Cont'd

Medicaid —Cont'd

Unlawful acts, §49-4-146.1.

Welfare fraud, §49-4-15.

PERSONAL CARE HOMES.

Criminal record.

Owners with criminal record
prohibited from operating,
§49-2-14.1.

Criminal records checks.

Owners, §49-2-14.1.

Owner of facility.

Criminal record.
Prohibited from operating,
§49-2-14.1.

Criminal record check, §49-2-14.1.

PERSONAL DIGITAL ASSISTANTS.

Juvenile justice.

Possession of prohibited items by
juvenile detainee, §49-4A-18.

PERSONAL REPRESENTATIVES.

Welfare.

Management of assistance payments,
§§49-4-170 to 49-4-173.

PERSONS WITH DISABILITIES.

Aid to the blind.

General provisions, §§49-4-50 to
49-4-61.

Aid to the disabled, §§49-4-80 to 49-4-86.

Amending acts.

Claims to assistance subject to,
§49-4-86.

Assignments.

Assistance not assignable, §49-4-84.

Attachment.

Exemption, §49-4-84.

Bankruptcy.

Assistance not subject to bankruptcy
law, §49-4-84.

County departments.

Duties, §49-4-83.

Death of recipient.

Payment of assistance after,
§49-4-84.

Definitions, §49-4-80.

Department of human services.

Duties, §49-4-82.

Eligibility for assistance, §49-4-81.

Executions.

Exemption, §49-4-84.

Garnishment.

Exemption, §49-4-84.

PERSONS WITH DISABILITIES

—Cont'd

Aid to the disabled —Cont'd

Removal of recipient to another
county.

Payment of assistance after,
§49-4-85.

Repealing acts.

Claims to assistance subject to,
§49-4-86.

Residents.

Eligibility for assistance, §49-4-81.

Payment of assistance after
recipient moves to another
county, §49-4-85.

Transfer.

Assistance not transferable,
§49-4-84.

Assignments.

Aid to the disabled.

Assistance not transferable,
§49-4-84.

Attachment.

Aid to the disabled.

Exemption, §49-4-84.

Bankruptcy.

Aid to the disabled.

Assistance not subject to bankruptcy
law, §49-4-84.

Blind and visually impaired persons.

Aid to the blind, §§49-4-50 to 49-4-61.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

Death.

Aid to the disabled.

Payment of assistance after death of
recipient, §49-4-84.

Definitions.

Aid to the disabled, §49-4-80.

Executions.

Aid to the disabled.

Exemption, §49-4-84.

Exemptions from levy and sale.

Aid to the disabled, §49-4-84.

Garnishment.

Aid to the disabled.

Exemption, §49-4-84.

Temporary assistance for needy families.

Drug testing of applicants and
recipients, exceptions, §49-4-193.

Transportation.

Department of human services.

Transportation for elderly and
disabled persons.

Generally, §§49-2-12 to 49-2-13.1.

INDEX

PERSONS WITH DISABILITIES

—Cont'd

Vending facilities on state property, operation, §§49-9-40 to 49-9-42.

Authorization to operate, §49-9-42.

Definitions, §49-9-40.

Income received by agency controlling space.

Restriction, §49-9-41.

Preference to person licensed by division of rehabilitation services, §49-9-42.

Public policy, declaration, §49-9-41.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency, §§49-9-1 to 49-9-42.

PHOTOGRAPHS.

Runaway children.

Registration of organizations providing services to youth.

Photograph of minors considered for admission.

Duties of registered organization, 49-5-162.

PHYSICAL THERAPY.

Therapy services for children with disabilities, §§49-4-169 to 49-4-169.3.

PHYSICIANS AND SURGEONS.

Family practice.

Joint board of family practice.

Composition, §49-10-1.

Duties, §49-10-3.

Powers, §49-10-3.

Authority to adopt rules and regulations, §49-10-4.

Power to make contract, §49-10-4.

Purpose, §49-10-2.

Runaway children.

Registration of organizations providing services to youth.

Employment by organization of licensees, §49-5-160.

PLANNING.

Family-planning services, §49-7-7.

PRE-K PROGRAM.

Toilet privacy screening, §49-5-22.

PREPONDERANCE OF EVIDENCE.

Medicaid.

False claims, §49-4-168.3.

PRESCHOOL CHILDREN.

Home delivered lunches, §49-1-7.

PRESCHOOL CHILDREN —Cont'd

Vaccinations, §49-1-7.

PRESUMPTIONS.

Medicaid.

Fraud.

Forfeiture of property and proceeds obtained through.

Rebuttable presumption that person's property subject to forfeiture, §49-4-146.3.

PRISONS AND PRISONERS.

Juvenile justice department.

Transfer of felony convicts to corrections department.

Conditions justifying transfer, §49-4A-9.

Telecommunications devices.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

PRISON TERMS.

Contraband.

Juvenile justice.

Guard lines.

Crossing with prohibited items, §49-4A-16.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Taking prohibited items into juvenile detention facilities, §49-4A-17.

Day-care centers.

Employees' records checks.

Unauthorized use of criminal history record information, §49-5-70.

Juvenile justice.

Aiding or encouraging child to escape, §49-4A-11.

Commerce with detainee, unlawful trafficking in, §49-4A-17.

Guard lines.

Crossing with prohibited items, §49-4A-16.

Hindering apprehension of child, §49-4A-11.

Possession of prohibited items by juvenile detainee, §49-4A-18.

Taking prohibited items into juvenile detention facilities, §49-4A-17.

Medicaid.

Unlawful acts, §49-4-146.1.

Minors.

Felons, §49-4A-9.

INDEX

PRISON TERMS —Cont'd

Minors —Cont'd

Record checks for persons supervising children.

False information, §49-5-112.

PRIVATE HOME CARE PROVIDERS.

Prohibition of operation with criminal record, §49-2-14.1.

PROBATION.

Delinquent children.

Juvenile justice department.

Powers and duties of department, §49-4A-7.

Temporary assistance for needy families.

Violation of condition of probation.

Ineligibility for assistance, §49-4-184.

PSYCHOLOGISTS.

Runaway and homeless youth.

Registration of organizations providing services to youth.

Employment by organization of licensees, 49-5-160.

PUBLIC ASSISTANCE.

Aid to the disabled.

General provisions, §§49-4-80 to 49-4-86.

Blind persons.

Aid to the blind.

General provisions, §§49-4-50 to 49-4-61.

Council for welfare administration, §49-2-16.

Economic rehabilitation services.

General provisions, §§49-8-1 to 49-8-6.

Long-term care partnership program, §§49-4-160 to 49-4-165.

Medicaid.

General provisions, §§49-4-140 to 49-4-157.

Old-age assistance.

General provisions, §§49-4-30 to 49-4-38.

Personal representatives.

Management of assistance payments, §§49-4-170 to 49-4-173.

Temporary assistance for needy families, §§49-4-180 to 49-4-193.

Welfare administration council, §49-2-16.

PUBLIC ASSISTANCE ACT OF 1965. **Georgia public assistance act of 1965.**

General provisions, §§49-4-1 to 49-4-19.

Short title, §49-4-1.

PUBLIC OFFICERS AND EMPLOYEES.

Medicaid, false claims.

Who may bring action, §49-4-168.2.

PURGING RECORDS.

Central child abuse registry, §49-5-184.

School districts.

Special school districts.

Reference to juvenile's commitment and treatment, §49-4A-12.

Q

QUALIFIED LONG-TERM CARE PARTNERSHIP PROGRAM ACT.

General provisions, §§49-4-160 to 49-4-165.

Short title, §49-4-160.

QUASI-PARENTAL.

In loco parentis.

Defined, §49-5-3.

R

RADIO.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

RECIPROCITY.

Long-term care partnership program.

Asset disregard.

Reciprocal agreements to extend asset disregard, §49-4-163.

RECORDS.

Child abuse and deprivation records.

General provisions, §§49-5-40 to 49-5-46.

Medicaid.

Regulations as to maintenance and use, §49-4-150.

Use of information.

Restrictions, §49-4-150.

Minors.

Record checks for persons supervising children, §§49-5-110 to 49-5-114.

INDEX

RECORDS —Cont'd

Temporary assistance for needy families.

Drug testing of applicants and recipients, retention of results, §49-4-193.

REHABILITATION.

Children and adolescents with severe emotional problems, §§49-5-220 to 49-5-227.

Economic rehabilitation services, §§49-8-1 to 49-8-6.

REHABILITATION SERVICES.

Economic rehabilitation services.

General provisions, §§49-8-1 to 49-8-6.

RELIGION.

Foster family homes.

Placing child with persons of same faith.

Duty of child-placing agencies, §49-5-12.

REPEALS.

Blind persons.

Aid to the blind.

Claims to assistance.

Subject to amendments or repeals, §49-4-61.

Disabled persons.

Aid to the disabled.

Claims to assistance subject to amendments or repeals, §49-4-86.

REPORTS.

Aged persons.

Community care and services for the elderly.

Annual progress report by department, §49-6-62.

Department of human services.

Annual report, §49-6-6.

Child abuse and neglect.

Central child abuse registry.

Reporting of abuse cases to division of family and children services, §§49-5-183, 49-5-184.

Child welfare agencies, §49-5-12.

Long-term health care.

Long-term care partnership program, §49-4-164.

REPORTS —Cont'd

Minors.

Children and adolescents with severe emotional problems.

Commissioner of behavioral health and developmental disabilities.

Annual report, §49-5-224.

Delinquency prevention and community-based services.

Annual report, §49-5-153.

PeachCare for Kids, §49-5-273.

Runaway children.

Registration of organizations providing services to youth.

Injury reporting policies, 49-5-162.

Temporary assistance for needy families.

Absence of child from home for period of 45 consecutive days.

Sanctions against recipient for failure to report, §49-4-185.

Welfare.

County directors, §49-3-3.1.

Public assistance.

Changes in recipient's circumstances, §49-4-12.

Youth services.

Adoption.

Child brought into state for placement or adoption, §49-5-15.

Commissioner of human services.

Annual report, §49-5-19.

RESEARCH.

Medicaid, §49-4-152.

RESIDENCE.

Welfare.

Aid to the blind.

Eligibility for assistance, §49-4-52.

Payment of assistance after recipient moves to another county, §49-4-60.

Aid to the disabled.

Eligibility for assistance, §49-4-81.

Payment of assistance after recipient moves to another county, §49-4-85.

Old-age assistance.

Eligibility, §49-4-30.

Payment after recipient moves to another county, §49-4-36.

INDEX

RESIDENCE —Cont'd

Welfare —Cont'd

Public assistance.

Eligibility, §49-4-4.

RESTITUTION.

Delinquent children, §49-4A-8.

RETALIATION.

Medicaid, false claims.

Actions by private persons or by attorney general.

Retaliation against employee for pursuing action, §49-4-168.4.

REVENUE AND TAXATION.

Department of revenue.

Organization, §49-2-6.

RULES AND REGULATIONS.

Aged persons.

Community care and services for the elderly, §49-6-64.

Child abuse and neglect.

Records.

Confidentiality, §49-5-42.

Economic rehabilitation services.

Director, §49-8-4.

Family-planning services, §49-7-8.

Insurance.

Long-term care insurance.

Long-term care partnership program, §49-4-164.

Juvenile detention facilities.

Rulemaking to govern, operate, administer, etc, facilities.

Board's role, §49-4A-6.

Long-term care partnership program, §49-4-164.

Medicaid.

Department of community health.

Succession to existing rules and regulations, §49-4-155.

Records.

Maintenance and use, §49-4-150.

Temporary assistance for needy families.

Board of human services, §49-4-183.

Department of human services.

Drug testing, §49-4-193.

Pilot LEARNFARE program, §49-4-192.

Youth services.

Training schools and other facilities.

Board of human services, §49-5-5.

RUNAWAY CHILDREN.

Definitions, §49-5-160.

RUNAWAY CHILDREN —Cont'd

Juvenile justice department.

Powers and duties of department, §49-4A-7.

Registration of organizations

providing services to youth,

§§49-5-160 to 49-5-164.

Admission policies, §49-5-162.

Child welfare agency licensing and regulation.

Organizations not exempt from licensing and regulation as child welfare agency, §49-5-164.

Display of registration, §49-5-163.

Duration of certificate, §49-5-161.

Duties of registered organization, §49-5-162.

Injury reporting policies, §49-5-162.

Inspection of facilities, §49-5-163.

Insurance.

Proof of liability insurance coverage, §49-5-162.

Investigation of problems with facility or organization, §49-5-163.

Issuance of certificate, §49-5-161.

Licensed.

Defined, §49-5-160.

Organization defined, §49-5-160.

Photograph of minors considered for admission.

Duties of registered organization, §49-5-162.

Process for registration, §49-5-161.

Qualified staff.

Defined, §49-5-160.

Requirement to register, §49-5-161.

Sheriffs.

Copy of registration to sheriff, §49-5-162.

Treatment and referral policies, §49-5-162.

RUNAWAY YOUTH SAFETY ACT.

Registration of organizations

providing services to youth,

§§49-5-160 to 49-5-164, 49-5-160 to §49-5-164.

S

SANITATION.

Pre-kindergarten programs.

Toilet privacy screening, §49-5-22.

INDEX

SCHOOLS AND EDUCATION.

At-risk children.

Georgia mentoring program,
§49-5-156.

Georgia mentoring program, §49-5-156.

Mentoring program, §49-5-156.

School districts.

Department of juvenile justice.
Designated special school districts,
§49-4A-12.

SEARCHES AND SEIZURES.

Medicaid.

Fraud.
Property subject to forfeiture for,
§49-4-146.3.

Search warrants.

Medicaid fraud.
Forfeiture of property and proceeds
obtained through.
Seizure of property subject to
forfeiture, §49-4-146.3.

SENIOR CITIZENS.

Adult day care.

Licenses for adult day care centers,
§§49-6-80 to 49-6-86.

Community care and services for the elderly, §§49-6-60 to 49-6-64.

Council on aging, §§49-6-20 to 49-6-22.

Old-age assistance.

General provisions, §§49-4-30 to
49-4-38.

Silver-haired legislature, §49-6-40.

SENTENCING.

Felony cases.

Minor under 17 convicted of felony,
§49-4A-9.

Minors.

Person under 17 convicted of felony,
§49-4A-9.
Sentencing certain juveniles to
department of corrections,
§49-4A-9.

SERVICE OF PROCESS.

Medicaid fraud.

Forfeiture of property.
Complaint and summons,
§49-4-146.3.
Subpoenas.
Information for investigations and
audits, §49-4-151.

Welfare.

Actions against department.
Notice of pendency of action,
§49-2-15.

SERVICE OF PROCESS —Cont'd

Welfare —Cont'd

Medicaid fraud.
Forfeiture of property and proceeds
obtained through.
Complaint and summons,
§49-4-146.3.

SETTLEMENTS.

Child welfare agency laws and regulations.

Penalties for violations, §49-5-12.1.

Medical assistance.

Claims, §49-4-148.

SHELTERS.

Vending facilities on state property, §§49-9-40 to 49-9-42.

SHERIFFS.

Deputies.

Delinquent children.
Taking into custody without a
warrant, §49-4A-8.

Runaway children.

Registration of organizations providing
services to youth.
Copy of registration to sheriff,
§49-5-162.

SIGNS.

Juvenile detention centers.

Guard lines, §49-4A-15.

SILVER-HAIRED LEGISLATURE, §49-6-40.

SNACK BARS.

Vending facilities on state property, §§49-9-40 to 49-9-42.

SOCIAL SECURITY.

Medicaid.

Construction of provisions with federal
act, §49-4-157.

Welfare.

Public assistance.
Provisions construed with federal
social security act, §49-4-18.

SOCIAL SERVICES.

Department, commissioner and board of human services.

County and district departments,
boards and directors of family and
children services.
General provisions, §§49-3-1 to
49-3-8.
General provisions, §§49-2-1 to
49-2-17.

INDEX

SOCIAL SERVICES —Cont'd

Economic rehabilitation services,
§§49-8-1 to 49-8-6.

Family-planning services, §§49-7-1 to
49-7-9.

General provisions, §§49-1-1 to 49-1-7.

Joint board of family practice,
§§49-10-1 to 49-10-4.

PeachCare for Kids act, §§49-5-270 to
49-5-273.

Creation, §49-5-273.

Definitions, §49-5-272.

Eligibility, §49-5-273.

Legislative findings, §49-5-271.

Payment of premiums, §49-5-273.

Purpose, §49-5-271.

Short title, §49-5-270.

Programs and protection for children and youth.

Central child abuse registry,
§§49-5-180 to 49-5-187.

Child abuse and deprivation records,
§§49-5-40 to 49-5-46.

Children and adolescents with severe
emotional problems, §§49-5-220 to
49-5-227.

Children and youth services, §§49-5-1
to 49-5-23.

Delinquency prevention and
community-based services,
§§49-5-150 to 49-5-155.

Emergency protection of children in
certain institutions, §§49-5-90 to
49-5-92.

Governor's office for children and
families, §§49-5-130 to 49-5-135.

PeachCare for Kids, §§49-5-270 to
49-5-273.

Record checks for persons supervising
children, §§49-5-110 to 49-5-114.

Registration of organizations providing
services to youth, §§49-5-160 to
49-5-164.

Public assistance.

Aid to the blind, §§49-4-50 to 49-4-61.

Aid to the disabled, §§49-4-80 to
49-4-86.

General provisions, §§49-4-1 to
49-4-19.

Medical assistance generally,
§§49-4-140 to 49-4-157.

Old-age assistance, §§49-4-30 to
49-4-38.

Personal representative to manage
assistance payments, §§49-4-170
to 49-4-173.

SOCIAL SERVICES —Cont'd

Public assistance —Cont'd

Temporary assistance for needy
families, §§49-4-180 to 49-4-193.

Runaway children.

Registration of organizations providing
services to youth, §§49-5-160 to
49-5-164.

Services for the aging.

Community care and services for the
elderly, §§49-6-60 to 49-6-64.

Council on aging, §§49-6-20 to 49-6-22.

General provisions, §§49-6-1 to 49-6-7.

Silver-haired legislature, §49-6-40.

SPEECH THERAPY.

**Therapy services for children with
disabilities,** §§49-4-169 to
49-4-169.3.

STATE CAPITOL.

**Silver-haired legislature meetings at
state capitol,** §49-6-40.

STATE DEPARTMENTS AND AGENCIES.

Community health, department of.
Medicaid, §§49-4-140 to 49-4-157.

Department of juvenile justice.
Generally, §§49-4A-1 to 49-4A-18.

**Governor's office for children and
families,** §§49-5-130 to 49-5-135.

Youth services.

Assistance to department of human
services, §49-5-4.

STATE OF GEORGIA.

False claims.

Medicaid false claims, §§49-4-168 to
49-4-168.6.

STATE PROPERTY.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

STATE TREASURER.

Vocational rehabilitation services.

Federal aid.

Georgia vocational rehabilitation
agency.

Office of state treasurer as
custodian of money received,
§49-9-8.

STATUTE OF LIMITATIONS.

Medicaid.

False claims.

Actions by private persons or by
attorney general, §49-4-168.5.

INDEX

STATUTE OF LIMITATIONS —Cont'd

Medicaid —Cont'd

False claims —Cont'd

Retaliation against employee for pursuing action, relief for, §49-4-168.4.

Filing claims for assistance, §49-4-148. Fraud.

Forfeiture of property and proceeds obtained through, §49-4-146.3.

STAYS.

Medicaid fraud.

Forfeiture of property and proceeds obtained through.

Criminal trial resulting from related indictment or information.

Stay of civil forfeiture proceedings during, §49-4-146.3.

SUBPOENAS.

Medicaid.

Information for investigations and audits, §49-4-151.

Welfare.

Financial records.

Alleged fraud, §49-4-15.1.

SUBROGATION.

Medicaid.

Department of community health.

Subrogation to recipients' insurance claims, §49-4-149.

Third party liability for payment of assistance, §49-4-148.

Vocational rehabilitation services.

Georgia vocational rehabilitation agency.

Insurance policies.

Subrogation of division to rights of covered persons, §49-9-15.

SUBSTANCE ABUSE.

Temporary assistance for needy families.

Drug testing of applicants, §49-4-193.

SUITABLE EMPLOYMENT.

Aged persons, §49-6-3.

SWABS.

Temporary assistance for needy families.

Drug testing of applicants, §49-4-193.

T

TANF, §§49-4-180 to 49-4-193.

TEACHERS.

Georgia mentoring program, §49-5-156.

Mentoring program, §49-5-156.

TELECOMMUNICATIONS.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

TELEPHONES.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

TEMPORARY ASSISTANCE FOR

NEEDY FAMILIES, §§49-4-180 to 49-4-193.

Aliens.

Qualified aliens, §49-4-188.

Birth.

Increment in benefits for child birth during eligibility period.

Schedule of assistance to eliminate, §49-4-186.

Board of human services.

Definition of board, §49-4-181.

Rules and regulations, §49-4-183.

Citation of act, §49-4-180.

Creation of program, §49-4-182.

Definitions, §49-4-181.

Department of human services.

Administration of provisions, §49-4-183.

Definition of department, §49-4-181.

Duties, §49-4-183.

Pilot LEARNFARE program.

Establishment, §49-4-192.

Standards and procedures.

Drug testing, rules and regulations, §49-4-193.

Establishment and enforcement, §49-4-191.

Drug testing of applicants and recipients, §49-4-193.

Eligibility for assistance, §49-4-184.

Applicants moving in state after receiving assistance from another state, §49-4-187.

Drug testing of applicants and recipients, §49-4-193.

Felony convictions.

Serious violent felony.

Ineligibility for assistance, §49-4-184.

Hearings.

Rights of applicant or recipient, §49-4-13.

INDEX

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES —Cont'd

Ineligibility for assistance, §49-4-184.

Interpretation and construction,
§49-4-190.

LEARNFARE program, §49-4-192.

**Moving into state after receiving
assistance from another state.**

Assistance for applicants, §49-4-187.

**Parent ineligible due to positive
drug test.**

Effect on eligibility of child, §49-4-193.

Parole.

Violation of condition of parole.

Ineligibility for assistance,
§49-4-184.

Pilot LEARNFARE program,
§49-4-192.

Probation.

Violation of condition of probation.

Ineligibility for assistance,
§49-4-184.

Purpose of program, §49-4-182.

Reports.

Absence of child from home for period
of 45 consecutive days.

Sanctions against recipient for
failure to report, §49-4-185.

Rules and regulations.

Board of human services, §49-4-183.

Pilot LEARNFARE program,
§49-4-192.

**Sanctions against recipient for
failure to comply**, §49-4-185.

Standards and procedures.

Department to establish and enforce,
§49-4-191.

Title of act, §49-4-180.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES ACT.

General provisions, §§49-4-180 to
49-4-193.

Short title, §49-4-180.

THE ECONOMIC REHABILITATION ACT OF 1975.

General provisions, §§49-8-1 to 49-8-6.

Short title, §49-8-1.

THIRD PARTIES.

Medicaid.

Defined, §49-4-141.

Lien of department against third
parties, §49-4-149.

THIRD PARTIES —Cont'd

Medicaid —Cont'd

Recovery of assistance from third
party liable for sickness, injury,
disease or disability, §49-4-148.

TOILETS.

Pre-kindergarten programs.

Privacy screening, §49-5-22.

TRANSPORTATION.

Aged persons.

Department of human services.

Transportation for elderly and
disabled persons.

Fund, §49-1-7.

Generally, §§49-2-12 to 49-2-13.1.

Disabled persons.

Department of human services.

Transportation for elderly and
disabled persons.

Generally, §§49-2-12 to 49-2-13.1.

Welfare.

Elderly and disabled persons.

Financial assistance for
transportation services,
§49-2-13.1.

Fund, §49-1-7.

Identifying transportation needs and
alternatives to meet them,
§49-2-13.

Plan for programs of department.

Development and revision,
§49-2-12.

U

URINALYSIS.

**Temporary assistance for needy
families.**

Drug testing of applicants, §49-4-193.

V

VENDING MACHINES.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

VENDING STANDS.

Vending facilities on state property,
§§49-9-40 to 49-9-42.

VENUE.

Medicaid, false claims.

Actions by private persons or by
attorney general, §49-4-168.6.

INDEX

VIRGIN ISLANDS.

State.

Defined, §49-5-8.

VOCATIONAL REHABILITATION SERVICES.

Budgets.

Georgia vocational rehabilitation agency.

Budget estimates, §49-9-9.

Confidentiality of information, §49-9-18.

Definitions.

Georgia vocational rehabilitation agency, §49-9-1.

Federal aid.

Georgia vocational rehabilitation agency.

Authorization to utilize funds, §49-9-6.

Carrying out purpose of federal statutes, §49-9-7.

Office of state treasurer as custodian of money received, §49-9-8.

Georgia vocational rehabilitation agency, §§49-9-1 to 49-9-42.

Aggrieved persons.

Entitlement to hearing, §49-9-13.

Assignment to department of human services, §49-9-4.

Budget estimates, §49-9-9.

Confidentiality of information, §49-9-18.

Cooperation with other entities, §49-9-5.

Created, §49-9-4.

Deaf-blind services leading to maximum independence and employment, §49-9-21.

Definitions, §49-9-1.

Executive director.

Duties, §49-9-3.

Reports, §49-9-3.

Federal aid.

Authorization to utilize funds, §49-9-6.

Carrying out purpose of federal statutes, §49-9-7.

Office of state treasurer as custodian of money received, §49-9-8.

Funds which may be utilized, §49-9-6.

Georgia vocational rehabilitation board.

Creation, §49-9-2.

Gifts.

Acceptance and use, §49-9-10.

VOCATIONAL REHABILITATION SERVICES —Cont'd

Georgia vocational rehabilitation agency —Cont'd

Independent living program, §49-9-12.

Insurance.

Subrogation to rights of covered person, §49-9-15.

Lien upon causes of action for damages, §49-9-16.

Personnel.

Political activity prohibited, §49-9-19.

Political activity by employees prohibited, §49-9-19.

Purpose, §49-9-4.

Rights under provisions not transferable, §49-9-14.

Rights under provisions not vested, §49-9-20.

Sale of property, §49-9-17.

Services to be provided to persons with disabilities, §49-9-5.

Financial need, §49-9-11.

Residency requirements, §49-9-11.

Subrogation to rights of person covered by insurance policy, §49-9-13.

Title to property.

Authorization to retain, §49-9-17.

Transfer from department of labor, §49-9-4.

Vending facilities on state property, §§49-9-40 to 49-9-42.

Declaration of public policy, §49-9-41.

Definitions, §49-9-40.

Income, §49-9-41.

Preference for licensed disabled persons, §49-9-42.

Georgia vocational rehabilitation board.

Creation, §49-9-2.

Gifts.

Georgia vocational rehabilitation agency.

Acceptance and use of, §49-9-10.

Authorization to utilize funds, §49-9-6.

Hearings.

Georgia vocational rehabilitation agency.

Aggrieved persons, §49-9-13.

Independent living program.

Georgia vocational rehabilitation agency, §49-9-12.

VOCATIONAL REHABILITATION SERVICES —Cont'd

Insurance.

- Georgia vocational rehabilitation agency.
- Subrogation to rights of covered person, §49-9-15.

Liens.

- Georgia vocational rehabilitation agency.
- Lien upon causes of action for damages, §49-9-16.

Rights not transferable, §49-9-14.

Rights not vested, §49-9-20.

VOLUNTEERS.

Elder care.

- Insurance coverage, §49-6-63.

Georgia mentoring program, §49-5-156.

Torts.

- Elder care, §49-6-63.

W

WAIVER.

Costs.

- Public assistance.
- Personal representative to manage assistance payments.
- Court costs waived, §49-4-171.

Medical assistance.

- Recovery of assistance from third parties.
- Compromise or waiver of claim, §49-4-148.

WARRANTS.

Child care licensing.

- Inspection warrants for residential child care licensing, §§49-2-20 to 49-2-25.

Inspection warrants.

- Child care licensing.
- Inspection warrants for residential child care licensing, §§49-2-20 to 49-2-25.

WEAPONS.

Juvenile justice.

- Guard lines, crossing with prohibited items, §49-4A-16.
- Possession of prohibited items by juvenile detainee, §49-4A-18.

WELFARE.

Actions.

- Medicaid fraud.
- Forfeiture of property and proceeds obtained through, §49-4-146.3.
- Notice of pendency of action against department.
- Service of notice, §49-2-15.

Aid to the blind, §§49-4-50 to 49-4-61.

Aid to the disabled, §§49-4-80 to 49-4-86.

Appeals.

- Medicaid, §49-4-153.
- Personal representatives.
- Appointment or removal, §49-4-172.
- Public assistance, §49-4-13.

Applications for public assistance, §49-4-8.

- Investigation and record concerning applicant, §49-4-9.
- Physical examination of applicant, §49-4-10.

Appropriations, §49-2-10.

- Matching federal funds.
- Use of appropriations for, §49-2-11.
- Public purpose.
- State welfare funds declared to be for, §49-2-10.

Bonds, surety.

- County directors, §49-3-3.

Confidentiality of information.

- Public assistance records.
- Use or disclosure of information, §49-4-14.

Conflicts of interest.

- Sales by certain individuals to institutions prohibited, §49-1-4.

Council for welfare administration, §49-2-16.

County boards, §49-3-1.

- Chairman and vice-chairman, §49-3-2.
- Defined, §49-1-1.
- District boards, §49-3-1.
- Expenses of members, §49-3-2.
- Members, §49-3-2.
- Old-age assistance.
- Roll book of employees.
- County board to maintain, §49-4-38.
- Sales by members to institutions prohibited, §49-1-4.
- Suspension and removal of members by governor, §49-1-5.

INDEX

WELFARE —Cont'd

County boards —Cont'd

Terms of office, §49-3-2.

Vacancies, §49-3-2.

County departments, §49-3-1.

Aid to the blind.

Duties as to, §49-4-54.

Supplementary treatment services,
§49-4-57.

Defined, §49-1-1.

District departments, §49-3-1.

Duties.

Aid to the blind, §49-4-54.

Aid to the disabled, §49-4-83.

Old-age assistance, §49-4-34.

Functions, §49-3-6.

Records.

Destruction, §49-3-8.

Reporting requirements, §49-3-3.1.

Rules and regulations.

Compliance with rules and
regulations of department of
human services, §49-1-2.

Staff, §49-3-4.

Supervision by department of human
services, §49-2-6.

County directors, §49-3-1.

Appointment, §49-3-3.

Bonds, surety, §49-3-3.

Defined, §49-1-1.

Duties, §49-3-5.

Personal representatives.

Appointment.

Petition by county or district
director, §49-4-170.

Records.

Maintenance by county or district
director, §49-4-173.

Powers, §49-3-5.

Qualifications.

Falsification.

Removal for, §49-3-7.

Removal.

Falsification of qualifications,
§49-3-7.

Suspension and removal by governor,
§49-1-5.

Definitions, §49-1-1.

Aid to the blind, §49-4-51.

Aid to the disabled, §49-4-80.

Medicaid, §§49-4-141, 49-4-146.1,
49-4-146.3.

Old-age assistance, §49-4-31.

Public assistance, §49-4-2.

Temporary assistance for needy
families, §49-4-181.

WELFARE —Cont'd

Economic rehabilitation services.

General provisions, §§49-8-1 to 49-8-6.

Eligibility for public assistance, §49-4-16.

Aid to the blind, §49-4-52.

Aid to the disabled, §49-4-81.

Disregarding of reserves, income and
resources, §49-4-6.

Old-age assistance, §49-4-32.

Residence in state as affecting,
§49-4-4.

Residence sold by government action.

Receipt of compensation not to affect
eligibility, §49-4-7.

Federal aid.

Department of human services.

Power to receive and disburse
federal funds, §49-2-5.

Matching federal funds.

Use of appropriations for, §49-2-11.

Public purpose.

Federal welfare funds declared to be
for, §49-2-10.

Receipt and disbursement of federal
funds, §49-2-11.

Food stamps.

Fraud in obtaining, §49-4-15.

Financial records.

Examination in instances of
alleged fraud, §49-4-15.1.

Surplus food distribution, §49-4-16.

Fraud.

Financial records.

Examination in instances of alleged
fraud, §49-4-15.1.

Medicaid, §49-4-146.1.

Forfeiture of property and proceeds
obtained through medicaid
fraud, §49-4-146.3.

Sentence and punishment, §49-4-15.

Funds.

Home delivered meals, transportation
services for the elderly and
preschool children with special
needs fund, §49-1-7.

Governor.

Suspension and removal of county
board members, county directors
or employees or officials of
department, §49-1-5.

Home delivered meals, §49-1-7.

Investments.

Applications for public assistance,
§49-4-9.

INDEX

WELFARE —Cont'd

Long-term care partnership program, §§49-4-160 to 49-4-165. **Medicaid.**

General provisions, §§49-4-140 to 49-4-157.

Nonprofit corporations.

Transfer of assets to department of human services, §49-1-6.

Notice.

Department of human services.

Pendency of action.

Service of notice against department, §49-2-15.

Medicaid fraud.

Forfeiture of property and proceeds obtained through.

Lien notice, §49-4-146.3.

Seizure of property subject to forfeiture, §49-4-146.3.

Transfer of assets of nonprofit corporation to department, §49-1-6.

Old-age assistance.

General provisions, §§49-4-30 to 49-4-38.

Personal representatives, §§49-4-170 to 49-4-173.

Appeal from order of appointment or removal, §49-4-172.

Appointment, §49-4-171.

Appeal from order of appointment, §49-4-172.

Grounds, §49-4-170.

Petition, §§49-4-170, 49-4-171.

Duties, §49-4-171.

Records.

Maintenance by county or district director, §49-4-173.

Removal, §49-4-171.

Appeal from order of removal, §49-4-172.

Preschool children with special needs, §49-1-7.

Public assistance act, §§49-4-1 to 49-4-19.

Amount.

Determination, §49-4-5.

Appeals, §49-4-13.

Applications, §49-4-8.

Investigation and record concerning applicant, §49-4-9.

Physical examination of applicant, §49-4-10.

Award, §49-4-11.

Periodic redetermination, §49-4-12.

WELFARE —Cont'd

Public assistance act —Cont'd

Changes in recipient's circumstances.

Reporting, §49-4-12.

Citation of act.

Short title, §49-4-1.

Counties.

Participation in costs not required, §49-4-17.

Definitions, §49-4-2.

Department of human services.

Categories of public assistance.

Establishment, §49-4-3.

Definition of department, §49-4-2.

Duties, §49-4-3.

Powers, §§49-4-3, 49-4-16.

Review of decisions of county departments, §49-4-12.

Social assistance register, §49-4-19.

Determining amount of assistance, §49-4-5.

Eligibility, §49-4-16.

Disregarding reserves, income and resources, §49-4-6.

Residence in state as affecting, §49-4-4.

Residence sold by government action.

Receipt of compensation not to affect eligibility, §49-4-7.

Fraud in obtaining, §49-4-15.

Funding of costs, §49-4-17.

General provisions, §§49-4-1 to 49-4-19.

Hearings, §49-4-13.

Payment, §49-4-11.

Overpayments.

Recovery, §49-4-15.

Records.

Applicants, §49-4-9.

Fraud.

Examination of financial records in instances of alleged fraud, §49-4-15.1.

Regulations as to records, §49-4-14.

Use or disclosure of information, §49-4-14.

Rules and regulations.

Federal social security act.

Adoption of rules to comply with, §49-4-18.

Records, §49-4-14.

Social assistance register, §49-4-19.

Social security.

Provisions construed with federal social security act, §49-4-18.

INDEX

WELFARE —Cont'd

Public assistance act —Cont'd

Title of act.

Short title, §49-4-1.

Qualified long-term care partnership program, §§49-4-160 to 49-4-165.

Records.

County departments.

Destruction of records, §49-3-8.

Personal representatives.

Maintenance by county or district director, §49-4-173.

Public assistance.

Applicants, §49-4-9.

Fraud.

Examination of financial records in instances of alleged fraud, §49-4-15.1.

Regulations as to records, §49-4-14.

Use or disclosure of information, §49-4-14.

Reports.

Public assistance.

Changes in recipient's circumstances, §49-4-12.

Residence.

Aid to the blind.

Eligibility for assistance, §49-4-52.

Payment of assistance after recipient moves to another county, §49-4-60.

Aid to the disabled.

Eligibility for assistance, §49-4-81.

Payment of assistance after recipient moves to another county, §49-4-85.

Old-age assistance.

Eligibility, §49-4-30.

Payment after recipient moves to another county, §49-4-36.

Public assistance.

Eligibility, §49-4-4.

Rules and regulations.

Department of human services.

County departments.

Compliance with rules and regulations of department, §49-1-2.

Public assistance.

Federal social security act.

Adoption of rules to comply with, §49-4-18.

Records, §49-4-14.

Service of process.

Actions against department.

Notice of pendency of action, §49-2-15.

WELFARE —Cont'd

Service of process —Cont'd

Medicaid fraud.

Forfeiture of property and proceeds obtained through.

Complaint and summons, §49-4-146.3.

Short title.

Georgia public assistance act of 1965, §49-4-1.

Social assistance register, §49-4-19.

Social security.

Public assistance.

Provisions construed with federal social security act, §49-4-18.

Subpoenas.

Financial records.

Alleged fraud, §49-4-15.1.

Temporary assistance for needy families, §§49-4-180 to 49-4-193.

Transportation.

Elderly and disabled persons, §49-1-7.

Financial assistance for transportation services, §49-2-13.1.

Identifying transportation needs and alternatives to meet them, §49-2-13.

Plan for programs of department.

Development and revision, §49-2-12.

WIRELESS COMMUNICATIONS.

Juvenile justice.

Possession of prohibited items by juvenile detainee, §49-4A-18.

WITNESSES.

Child abuse and neglect.

Hearing on classification of alleged abuser.

Children under 14 years of age not required to testify, §49-5-183.1.

Y

YOUTH SERVICES, §§49-5-1 to 49-5-23.

Actions.

Commissioner of human services.

Instituting or intervening in legal proceedings, §49-5-18.

Adoption.

Child brought into state for placement or adoption, §49-5-15.

INDEX

YOUTH SERVICES —Cont'd

Adoption —Cont'd

- Department of human services.
- Powers and duties as to adoption services, §49-5-8.

Appropriations.

- Funding of costs of benefits and administration, §49-5-7.

Attorney general.

- Child welfare agencies.
- Collection of civil penalties, §49-5-12.1.

Board of human services.

- Duties and powers, §49-5-5.

Charities.

- Existing charters of charitable institutions not affected, §49-5-20.

Child care learning centers.

- Adult-child ratio.
- Federal adult-child ratio.
- Private care centers not required to meet, §49-5-13.
- Private centers.
- Adult-child ratio.
- Not required to meet federal adult-child ratio, §49-5-13.

Citation of act.

- Short title, §49-5-1.

Commissioner of human services.

- Reports.
- Annual report, §49-5-19.

Contracts.

- Department of human services.
- Power to contract, §49-5-16.

Council for welfare administration, §49-2-16.

County and district departments.

- Administration of state plan and program, §49-5-7.

Definitions, §§49-5-3, 49-5-12.

Delinquent or unruly children.

- Defined, §49-5-3.

Department of human services.

- Assistance from other state departments, agencies, officers and employees, §49-5-4.
- Development and administration of public services, §49-5-7.
- Duties, §49-5-8.
- Employees, §49-5-6.
- Exclusive state agency for certain purposes, §49-5-7.
- Gifts.
- Acceptance and use, §49-5-17.
- Inspections.
- Child welfare agencies, §49-5-12.

YOUTH SERVICES —Cont'd

Department of human services —Cont'd

Inspections —Cont'd

- Public and private institutions, §49-5-9.
- Personnel, §49-5-6.
- Powers, §§49-5-8, 49-5-9.
- Contracts, §49-5-16.
- Federal courts.

- Acceptance of children from federal courts for compensation, §49-5-16.

Gifts.

- Acceptance and use, §49-5-17.
- Personnel, §49-5-6.
- State personnel board rules and regulations.
- Conformity to, §49-5-6.

Department of juvenile justice.

- General provisions, §§49-4A-1 to 49-4A-18.

Detention.

- Defined, §49-5-3.

Division of youth services.

- Transfer of functions and employees to department of juvenile justice, §49-4A-5.

Employees' retirement system.

- Department employees.
- Membership of certain employees, §49-5-6.

Escape from youth detention centers.

- Aiding, harboring or encouraging escapees or hindering their apprehension, §49-5-21.

Federal aid.

- Powers of board to avoid loss of federal funds, §49-5-7.

Georgia mentoring program, §49-5-156.

Governor's office for children and families, §§49-5-130 to 49-5-135.

Group-care facilities.

- Regional group-care facilities.
- Powers and duties of department, §49-5-8.

Inspections.

- Department of human services.
- Public and private institutions, §49-5-9.

Intervention.

- Commissioner of human services.
- Instituting or intervening in legal proceedings, §49-5-18.

INDEX

YOUTH SERVICES —Cont'd

Legislative declaration.

Purpose of provisions, §49-5-2.

Mentoring program, §49-5-156.

PeachCare for Kids act, §§49-5-270 to 49-5-273.

Purpose of provisions, §49-5-2.

Records.

Restricted access, §49-5-41.

Reports.

Child brought into state for placement or adoption, §49-5-15.

Commissioner of human services.

Annual report, §49-5-19.

Rules and regulations.

Training schools and other facilities.

Board of human services, §49-5-5.

YOUTH SERVICES —Cont'd

Saving provisions.

Charters of charitable institutions.

Existing charters not affected, §49-5-20.

State departments and agencies.

Assistance to department of human services, §49-5-4.

Title of act.

Short title, §49-5-1.

Welfare administration council, §49-2-16.

OFFICIAL CODE OF GEORGIA ANNOTATED

2018 Supplement

Including Acts of the 2018 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 38 2013 Edition

Title 49. Social Services

Title 50. State Government
Chapters 1—12

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

**Place in Pocket of Corresponding Volume of
Main Set**

**LexisNexis®
Charlottesville, Virginia**

FURMAN SMITH
LAW LIBRARY
AUG 29 2018
MERCER UNIVERSITY

COPYRIGHT © 2014—2018

BY

THE STATE OF GEORGIA

All rights reserved.

ISBN 978-0-327-11074-3 (set)

ISBN 978-0-7698-6390-0

394776

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2018 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2018. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2018.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2018 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2018 supplement pamphlets and in the bound volumes of the Code.

Contacting LexisNexis®:

Visit our Website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please write or call toll free at 1-800-833-9844, fax at 1-518-487-3584, or email us at Customer.Support@lexisnexis.com. Direct written inquiries to:

LexisNexis®

Attn: Official Code of Georgia Annotated

701 East Water Street

Charlottesville, Virginia 22902-5389

TITLE 49

SOCIAL SERVICES

Chap.

1. General Provisions, 49-1-1 through 49-1-9.
2. Department of Human Services, 49-2-1 through 49-2-25.
3. County and District Departments, Boards, and Directors of Family and Children Services, 49-3-1 through 49-3-9.
4. Public Assistance, 49-4-1 through 49-4-193.
- 4A. Department of Juvenile Justice, 49-4A-1 through 49-4A-18.
- 4B. Interstate Compact for Juveniles, 49-4B-1 through 49-4B-3.
5. Programs and Protection for Children and Youth, 49-5-1 through 49-5-281.
6. Services for the Aging, 49-6-1 through 49-6-92.
9. Transfer of Division of Rehabilitation Services to Department of Labor, 49-9-1 through 49-9-53.

CHAPTER 1

GENERAL PROVISIONS

Sec.		ship caregivers and children in
49-1-8.	Website access to link or portal to social services specific to kin-	their care; definitions.

49-1-8. Website access to link or portal to social services specific to kinship caregivers and children in their care; definitions.

(a) As used in this Code section, the term:

(1) "Basic necessities" means water, electricity, gas, power, light, heat, telephone, or other public utility services.

(2) "Child" means any person under 18 years of age.

(3) "Kinship caregiver" means a grandparent, aunt, uncle, great aunt, great uncle, cousin, sibling, or close family friend of a child who has assumed responsibility for raising such child in an informal, noncustodial, or guardianship capacity upon the parents of such child losing or abdicating the ability to care for or provide basic necessities for such child.

(4) “Parents” means the legal father and the legal mother of a child.

(b) The department shall have the authority to provide and shall take all necessary steps to so provide a separate link or portal on its website which provides access to social services that are specific to kinship caregivers and the children in their care. Such link or portal shall provide specific information and access for applying for public assistance benefits in this state as a kinship caregiver and on behalf of children in the care of a kinship caregiver. (Code 1981, § 49-1-8, enacted by Ga. L. 2016, p. 337, § 1-1/HB 962.)

Effective date. — This Code section became effective July 1, 2016.

Editor’s notes. — Former Code Section 49-1-8, relating to sales of surplus products of institutions and disposition of

proceeds, was repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009. The former Code section was based on Ga. L. 1939, p. 392, §§ 1, 4.

CHAPTER 2

DEPARTMENT OF HUMAN SERVICES

Article 1

Sec.

General Provisions

Sec.			note.) Record search for conviction data on prospective employees.
49-2-1.	Department created; transfer of powers, functions, and duties of Department of Human Resources to Department of Human Services; creation, appointment, removal, and duties of commissioner; creation, appointment, and duties of kinship care enforcement administrator.	49-2-14.1.	(Effective until October 1, 2019. See note.) Definitions; records check requirement for licensing certain facilities.
		49-2-14.1.	(Effective October 1, 2019. See note.) Definitions; records check requirement for licensing certain facilities.
		49-2-16.	Council for Welfare Administration [Repealed].
49-2-14.	(Effective until October 1, 2019. See note.) Record search for conviction data on prospective employees.	49-2-18.	Director of Division of Family and Children Services; appointment; qualifications.
49-2-14.	(Effective October 1, 2019. See	49-2-19.	DFCS State Advisory Board; membership; duties; officers and committees.

Law reviews. — For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

ARTICLE 1

GENERAL PROVISIONS

49-2-1. Department created; transfer of powers, functions, and duties of Department of Human Resources to Department of Human Services; creation, appointment, removal, and duties of commissioner; creation, appointment, and duties of kinship care enforcement administrator.

(a) There is created a Department of Human Services. The powers, functions, and duties of the Department of Human Resources as they existed on June 30, 2009, except for those relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Division of Public Health, and the Office of Regulatory Services, unless specifically transferred or reassigned to the Department of Community Health or the Department of Behavioral Health and Developmental Disabilities, are transferred to the Department of Human Services effective July 1, 2009, and the Department of Human Resources shall be reconstituted as the Department of Human Services effective July 1, 2009.

(b) There is created the position of commissioner of human services. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the board, subject to the approval of the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(c)(1) As used in this subsection, the term:

(A) "Fictive kin" shall have the same meaning as set forth in Code Section 15-11-2.

(B) "Kinship caregiver" means a grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling of a child under the age of 18 or fictive kin who has assumed responsibility for raising such child in an informal, noncustodial, or guardianship capacity upon the legal parents of such child losing or abdicating the ability to care for or provide basic necessities for such child.

(2) There is created the position of kinship care enforcement administrator within the Department of Human Services who shall be appointed by and serve at the discretion of the commissioner of human services. The kinship care enforcement administrator shall account for, monitor, facilitate, and ensure compliance with all laws, rules, and regulations of the federal government and this state which

relate to any programs, including, but not limited to, any pilot programs, subsidies, or benefits, available to kinship caregivers or the children within their care. (Ga. L. 1972, p. 1015, § 1201; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2016, p. 337, § 2-1/HB 962.)

The 2016 amendment, effective July 1, 2016, added subsection (c).

49-2-14. (Effective until October 1, 2019. See note.) Record search for conviction data on prospective employees.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees. Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a personal care home, the provisions of Code Sections 31-7-250 through 31-7-264 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when

the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(i) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 49-2-14, enacted by Ga. L. 1986, p. 1225, § 1; Ga. L. 1999, p. 574, § 2; Ga. L. 2002, p. 942, § 9; Ga. L. 2003, p. 495, § 1; Ga. L. 2005, p. 789, §§ 1, 2/HB 180; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2018, p. 507, § 2-12/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (i).

Editor's notes. — Code Section 49-2-14 is set out twice in this Code. The

first version is effective until October 1, 2019, and the second version becomes effective on that date.

49-2-14. (Effective October 1, 2019. See note.) Record search for conviction data on prospective employees.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees. Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon re-

ceipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding subsection (c) of this Code section, when a contractor to this department is a personal care home, Article 14 of Chapter 7 of Title 31 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search

fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(i) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 49-2-14, enacted by Ga. L. 1986, p. 1225, § 1; Ga. L. 1999, p. 574, § 2; Ga. L. 2002, p. 942, § 9; Ga. L. 2003, p. 495, § 1; Ga. L. 2005, p. 789, §§ 1, 2/HB 180; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2018, p. 507, § 2-12/SB 336; Ga. L. 2018, p. 611, § 2-1/SB 406.)

The 2018 amendments. — The first 2018 amendment, effective July 1, 2018, added subsection (i). The second 2018 amendment, effective October 1, 2019, substituted the present provisions of subsection (e) for the former provisions, which read: "Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a

personal care home, the provisions of Code Sections 31-7-250 through 31-7-264 shall apply."

Editor's notes. — Code Section 49-2-14 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

49-2-14.1. (Effective until October 1, 2019. See note.) Definitions; records check requirement for licensing certain facilities.

(a) As used in this Code section, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41; or

(M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) “Criminal record” means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) “Facility” means a child welfare agency required to be licensed under Code Section 49-5-12.

(5) “GCIC” means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) “GCIC information” means criminal history record information as defined in Code Section 35-3-30.

(7) “License” means the document issued by the department to authorize the facility to operate.

(8) “Owner” means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) “Records check application” means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license

of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer

shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 11 of Chapter 7 of Title 31.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section.

(g) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose

fingerprints were taken of the parameters of such retention. (Code 1981, § 49-2-14.1, enacted by Ga. L. 2007, p. 305, § 1/HB 155; Ga. L. 2008, p. 1145, § 3/HB 984; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2013, p. 524, § 3-8/HB 78; Ga. L. 2014, p. 444, § 2-13/HB 271; Ga. L. 2018, p. 507, § 2-13/SB 336.)

The 2014 amendment, effective July 1, 2014, deleted “, relating to murder and felony murder” following “Code Section 16-5-1” at the end of subparagraph (a)(2)(A).

The 2018 amendment, effective July 1, 2018, added subsection (g).

Editor’s notes. — Code Section 49-2-14.1 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

49-2-14.1. (Effective October 1, 2019. See note.) Definitions; records check requirement for licensing certain facilities.

(a) As used in this Code section, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41; or

(M) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a child welfare agency required to be licensed under Code Section 49-5-12.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background

checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 14 of Chapter 7 of Title 31.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section.

(g) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 49-2-14.1, enacted by Ga. L. 2007, p. 305, § 1/HB 155; Ga. L. 2008, p. 1145, § 3/HB 984; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2013, p. 524, § 3-8/HB 78; Ga. L. 2014, p. 444, § 2-13/HB 271; Ga. L. 2018, p. 507, § 2-13/SB 336; Ga. L. 2018, p. 611, § 2-2/SB 406.)

The 2014 amendment, effective July 1, 2014, deleted “, relating to murder and felony murder” following “Code Section 16-5-1” at the end of subparagraph (a)(2)(A).

The 2018 amendments. — The first 2018 amendment, effective July 1, 2018, added subsection (g). The second 2018

amendment, effective October 1, 2019, substituted “Article 14” for “Article 11” near the end of subsection (e).

Editor’s notes. — Code Section 49-2-14.1 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

49-2-16. Council for Welfare Administration.

Reserved. Repealed by Ga. L. 2015, p. 552, § 12/SB 138, effective July 1, 2015.

Editor’s notes. — This Code section was based on Code 1981, § 49-2-16, enacted by Ga. L. 1996, p. 1423, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.

49-2-18. Director of Division of Family and Children Services; appointment; qualifications.

(a) The Governor shall appoint the director of the Division of Family and Children Services of the department who shall serve at the pleasure of the Governor. The director shall be an employee of the department but shall report directly to the Governor.

(b) The director shall have a college degree and at least one of the following qualifications:

(1) Educational background or managerial experience involving work with vulnerable populations;

(2) Work experience in a setting dealing with the safety or well-being of children or other vulnerable populations; or

(3) Experience working in or managing a complex, multidisciplinary business or government agency. (Code 1981, § 49-2-18, enacted by Ga. L. 2015, p. 552, § 1/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

49-2-19. DFCS State Advisory Board; membership; duties; officers and committees.

(a) There is established the DFCS State Advisory Board which shall consist of 20 members appointed by the Governor as follows:

(1) One representative from each of the 15 DFCS regions; and

(2) Five members who are either state legislators or representatives from the fields of:

(A) Child welfare;

(B) Former youth in foster care;

(C) Public health or behavioral health and developmental disabilities;

(D) Private child welfare care provider; or

(E) Juvenile justice.

(b) The advisory board shall review and make recommendations to the director of the Division of Family and Children Services of the department regarding issues relating to the protection of children and the welfare and public assistance functions of the division. Such review and recommendations shall include, but not be limited to, the following:

(1) Examination of current law, rules and regulations, and policy and recommendations to improve the ability of the division to increase the safety of children, respond to child maltreatment, and ensure the well-being of and timely permanency for children who are referred to and involved in the child welfare system;

(2) Propose legislative or administrative changes to policies and programs that are integral to the protection of children and the welfare and public assistance functions of the division;

(3) Examination of caseload assignments and ratios of child protective services workers and recommendations for reasonable expectations for such workers and supervision and support needed to perform their jobs; and

(4) Recommendations on improved collaboration among state, local, community, and public and private stakeholders in child welfare programs and services that are administered by the division.

(c) The advisory board shall elect a chairperson from among its membership. The advisory board may elect such other officers and establish committees as it considers appropriate.

(d) The advisory board shall meet at least quarterly and at such additional times as it shall determine necessary to perform its duties. The advisory board shall also meet on the call of the chairperson, the director of the Division of Family and Children Services of the department, or the Governor. The director of the Division of Family and Children Services of the department shall participate in such meetings and provide a quarterly report to the advisory board in advance of each quarterly meeting.

(e) Members shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the advisory board; provided, however, that any legislative member shall receive the allowances authorized by law for legislative members of interim legislative committees and any members who are state employees shall be reimbursed for expenses incurred by them in the same manner as they are reimbursed for expenses in their capacities as state employees. (Code 1981, § 49-2-19, enacted by Ga. L. 2015, p. 552, § 1/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 3

COUNTY AND DISTRICT DEPARTMENTS, BOARDS,
AND DIRECTORS OF FAMILY AND CHILDREN
SERVICES

Sec.		Sec.	
49-3-2.	Appointment of county board members; terms; vacancies; per diem and expenses; role of county board.	49-3-9.	DFCS Regional Advisory Board established in each region; membership; purpose; meetings.
49-3-6.	Functions of county department.		

49-3-2. Appointment of county board members; terms; vacancies; per diem and expenses; role of county board.

(a) Each county board shall consist of between five and seven members who shall be appointed by the governing authority of the county. No person serving as a member of a county board on July 1,

2015, shall have such person's term of office shortened by this subsection. On and after that date, however, vacancies in such office which occur for any reason, including but not limited to expiration of the term of office, shall be filled by appointment of the county governing authority except as provided in subsection (c) of this Code section. No elected officer of the state or any subdivision thereof shall be eligible for appointment to the county board. In making appointments to the county board of family and children services, the governing authority shall ensure that appointments are reflective of gender, race, ethnic, and age characteristics of the county population. Further, the governing authority shall ensure that all appointments made on or after July 1, 2015, are made from the following categories:

- (1) Pediatric health care providers, active or retired;
- (2) Appropriate school personnel, active or retired;
- (3) Emergency responders, active or retired;
- (4) Law enforcement personnel, active or retired;
- (5) Private child welfare service providers, active or retired;
- (6) Alumni of the child welfare system;
- (7) Mental health care providers, active or retired;
- (8) Former foster parents; and
- (9) Leaders within the faith-based community, active or retired.

(b) The term of office of members of the county board shall be for five years and until the appointment and qualification of their respective successors.

(c) Appointments to fill vacancies on the county board caused by death, resignation, or removal before the expiration of a term shall be made for the remainder of such term in the same manner as provided in this Code section for original appointments. In the event that the governing authority of the county shall fail to fill any such vacancy or any vacancy caused by expiration of term on the county board within 90 days after such vacancy occurs, the commissioner may appoint members to the county board to fill such vacancies.

(d) Members of the county board shall serve without compensation, except that they shall be paid a per diem of not less than \$15.00 per month and shall be reimbursed for traveling and other expenses actually incurred in the performance of their official duties; provided, however, that the gross expenses assessed against a county shall not exceed the amount of the budget of the county previously set aside and levied by the county authorities for such expenses.

(e) The role of the county board shall be to protect the well-being of this state’s children while preserving family integrity. County boards may review the administration of all welfare and public assistance functions for the county, including such programs as Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), employment services, child protective services, foster care, and adoptions, and shall report no less than annually and not later than December 15 of each year to the director of the Division of Family and Children Services of the department the effectiveness of the county department’s provision of services, the needs of the community, and its recommendations for improved operations of the county department. County boards shall serve as an active liaison and a link between the county department and the local community. County boards shall support the overall mission of the Division of Family and Children Services of the department. (Ga. L. 1937, p. 355, § 10; Ga. L. 1963, p. 222, § 1; Ga. L. 1981, p. 960, § 1; Ga. L. 1988, p. 1354, § 1; Ga. L. 1994, p. 505, § 1; Ga. L. 2015, p. 552, § 2/SB 138; Ga. L. 2016, p. 376, § 1/HB 765; Ga. L. 2017, p. 774, § 49/HB 323.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.
The 2016 amendment, effective July 1, 2016, added “, active or retired” at the end of paragraphs (a)(1) through (a)(5), (a)(7), and (a)(9).

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised capitalization throughout subsection (e).

49-3-6. Functions of county department.

(a) The primary purpose of county departments shall be to protect children. To achieve this primary purpose, the county departments shall, in accordance with rules and regulations of the Division of Family and Children Services of the department:

- (1) Investigate reports of abuse or neglect;
- (2) Assess, promote, and support the safety of a child in a safe and stable family or other appropriate placement in response to allegations of abuse or neglect;
- (3) Work cooperatively with law enforcement regarding reports that include criminal conduct allegations;
- (4) In collaboration with the family treatment court division planning group, if one exists, establish a written protocol to assess cases involving substantiated reports of abuse or neglect for possible referral to a family treatment court division. Such protocol shall be consistent with the Council of Accountability Courts of Georgia’s certification requirements and include sufficient criteria to determine the need for substance abuse treatment; and

(5) Without compromising child safety, coordinate services to achieve and maintain permanency on behalf of the child, strengthen the family, and provide prevention, intervention, and treatment services pursuant to this title.

(b) In addition to the purpose in subsection (a) of this Code section, and subject to the rules and regulations of the Board of Human Services, the county department shall be charged with the administration of all forms of public assistance in the county, including home relief; indoor and outdoor care for those in need; temporary assistance for needy families; old-age assistance; aid to the blind and otherwise disabled; the care and treatment of dependent and neglected children; and such other welfare activities as shall be delegated to it by the Division of Family and Children Services of the department or by the county commissioners. (Ga. L. 1937, p. 355, § 13; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2015, p. 422, § 5-100/HB 310; Ga. L. 2015, p. 552, § 3/SB 138; Ga. L. 2017, p. 585, § 1-5/SB 174.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, inserted “juvenile” preceding “probation officer” in the last sentence of the previously existing provisions of this Code section. The second 2015 amendment, effective July 1, 2015, rewrote this Code section. See Code Commission note regarding the effect of these amendments.

The 2017 amendment, effective July 1, 2017, in subsection (a), substituted “or” for “and” in paragraph (a)(1), deleted “and” at the end of paragraph (a)(3), added paragraph (a)(4), and redesignated former paragraph (a)(4) as present paragraph (a)(5).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the amendment to this Code section by Ga. L. 2015, p. 422, § 5-100/HB 310, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 552, § 3/SB 138, due to irreconcilable conflict.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 231 (2015). For article on the 2017 amendment of this Code section, see 34 Ga. St. U. L. Rev. 115 (2017).

49-3-9. DFCS Regional Advisory Board established in each region; membership; purpose; meetings.

There is established in each region a DFCS Regional Advisory Board. Each regional advisory board shall be composed of at least five members and shall include the director and at least one board member of each county department of family and children services within the region as selected by the DFCS regional director. The DFCS regional director may appoint additional members who are representatives from the categories included in paragraphs (1) through (9) of subsection (a) of Code Section 49-3-2. The purpose of the regional advisory boards shall be to improve communication and coordination between the county departments of family and children services of the counties within the region, to improve and streamline service delivery by the county

departments, and to provide for the consistent application of state policy of the Division of Family and Children Services of the department within the county departments within each DFCS region. Each regional advisory board shall meet at least quarterly. (Code 1981, § 49-3-9, enacted by Ga. L. 2015, p. 552, § 4/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 4

PUBLIC ASSISTANCE

Article 1		Article 4	
General Provisions		Aid to the Disabled	
Sec.		Sec.	
49-4-6.	Reserves, income, and resources to be disregarded.	49-4-80.	Definitions.
49-4-15.	Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.	49-4-81.	Eligibility for assistance under this article.
49-4-20.	Drug test required for applicants and recipients of certain government benefits; penalties for violation; reapplication; confidentiality of records.	Article 7	
49-4-21.	Photo requirement on electronic benefits transfer cards for food stamps.	Medical Assistance Generally	
49-4-22.	Eligibility for aid under federal Supplemental Nutrition Assistance Program.	49-4-142.	Department of Community Health established; adoption, administration, and modification of state plan; drug application fees; personal needs allowance.
Article 2		49-4-142.2.	Expansion of Medicaid eligibility through an increase in the income threshold.
Old-Age Assistance		49-4-146.3.	Civil forfeiture of property and proceeds obtained through Medicaid fraud.
49-4-31.	Definitions.	49-4-147.1.	Claims by department against estate of Medicaid recipients.
49-4-32.	Eligibility for assistance under this article.	49-4-151.1.	Errors or omissions in reporting; right to hearing; exclusion.
Article 3		49-4-152.5.	Restocking fees.
Aid to the Blind		49-4-158.	Certain dependents of military service members to maintain eligibility and priority for certain medical assistance and developmental disability services under certain conditions; waiver to implement such provision; compli-
49-4-51.	Definitions; when person considered blind.		
49-4-52.	Eligibility for assistance under this article.		

Sec.	ance with certain federal laws, rules, and regulations; definitions.	Sec.	participation; stay of discovery; receipt of proceeds.
	Article 7B		Article 9
	False Medicaid Claims		Temporary Assistance for Needy Families
49-4-168.1.	Civil penalties for false or fraudulent Medicaid claims.	49-4-193.	Drug test required for certain TANF applicants or recipients; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.
49-4-168.2.	Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on		

ARTICLE 1

GENERAL PROVISIONS

49-4-1. Short title.

JUDICIAL DECISIONS

Cited in Fedina v. Larichev, 322 Ga. App. 76, 744 S.E.2d 72 (2013).

49-4-6. Reserves, income, and resources to be disregarded.

- (a) In determining eligibility for and the amount and kind of public assistance to be provided, the board shall prescribe by regulations reasonable emergency reserves and the income and resources which may be exempt and disregarded. With respect to any category of assistance, the income and resources to be disregarded shall not be in excess of the amounts and kinds authorized under the federal Social Security Act and shall not be less than the amounts and kinds of income and resources required to be disregarded by the federal Social Security Act and any other act of Congress relating to the assistance programs in which federal financial participation is authorized under Titles IV, XVI, XIX, and XX of the federal Social Security Act.
- (b) Notwithstanding any other provision of this Code section, this chapter, or state law, to the extent that such disregard does not violate federal law or terminate or decrease the state's eligibility for federal funding for public assistance or for disabled persons, the Department of Human Services, the Department of Community Health, and their successors shall disregard for the purpose of eligibility for public assistance or assistance for disabled persons any funds or property held in trust for a disabled person by a community trust created and administered in accordance with Chapter 10 of Title 30, a trust for a

person with one or more impairments with substantially similar provisions for distributions, or any noncash distributions from such trusts. (Ga. L. 1965, p. 385, § 14; Ga. L. 1967, p. 878, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1987, p. 1435, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1996, p. 804, § 3; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2015, p. 5, § 49/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted former subsection (b), which read: “For purposes of applying the \$50.00 child support disregard provided for in Title IV of the federal Social Security Act, amounts paid by the Social Security Administration under the Old Age Survivors and

Disability Insurance (OASDI) program, payments made by the United States Department of Veterans Affairs to the family, and any other benefits not assignable to the state pursuant to Title IV of the federal Social Security Act shall not be considered child support.”; and redesignated former subsection (c) as present subsection (b).

49-4-15. Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.

(a) Any person who by means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:

(1) Any grant or payment of public assistance, food stamps, or medical assistance (Medicaid) to which he or she is not entitled;

(2) A larger amount of public assistance, food stamp allotment, or medical assistance (Medicaid) than that to which he or she is entitled; or

(3) Payment of any forfeited grant of public assistance;

or any person who, with intent to defraud the department, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor unless the total amount of the value of public assistance, food stamps, and medical assistance (Medicaid) so obtained exceeds \$1,500.00, in which event such person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. In determining the amount of value of public assistance, food stamps, and medical assistance (Medicaid) obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

(b) It shall be a fraudulent device within the meaning of subsection (a) of this Code section, and punishable as therein provided, for any person:

(1) Knowingly to use, alter, or transfer food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law;

(2) Knowingly to possess food stamp coupons or authorizations to purchase food stamp coupons when he or she is not authorized by law to possess them;

(3) Knowingly to possess or redeem food stamp coupons or benefits when he or she is not authorized by law to possess or redeem them; or

(4) Knowingly to use or redeem food stamp coupons or benefits in any manner or for purposes not authorized by law.

(c)(1) Any person who obtains any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(2) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he is entitled shall also be liable to the state for the amount of such payment.

(3) Any person who receives any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(4) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, in accordance with regulations of the board which shall conform to the federal Social Security Act and federal regulations promulgated pursuant thereto, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the department. Any repayment required by this subsection may be waived by the department, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the department. Recoupment may be initiated without regard to whether the department has obtained a judgment in a civil action but shall not be initiated prior to notice and an opportunity for a hearing in accordance with this article. The department shall make such waivers and determinations of repayment and the manner of repayment in accordance with regulations of the board which shall conform to the federal Social Security Act and the federal regulations promulgated pursuant thereto.

(d) Any felony offense under this Code section may be prosecuted by accusation as provided in Code Section 17-7-70.1.

(e)(1) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation of this Code section without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Ga. L. 1965, p. 385, § 13; Ga. L. 1973, p. 183, § 1; Ga. L. 1975, p. 477, § 1; Ga. L. 1976, p. 1490, § 1; Ga. L. 1978, p. 994, § 1; Ga. L. 1978, p. 1964, § 1; Ga. L. 1989, p. 466, § 1; Ga. L. 1996, p. 1517, §§ 1, 1.2; Ga. L. 1997, p. 1021, § 3; Ga. L. 2015, p. 519, § 4-1/HB 328.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "he or she" for "he" in paragraphs (1) and (2), and, in the undesignated language at the

end of subsection (a), substituted "\$1,500.00" for "\$500.00" and inserted the second occurrence of "(Medicaid)".

49-4-20. Drug test required for applicants and recipients of certain government benefits; penalties for violation; reapplication; confidentiality of records.

(a) As used in this Code section, the term “established drug test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the United States Department of Health and Human Services or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test that includes the following:

- (1) Which illegal drugs will be the subject of testing;
- (2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;
- (3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;
- (5) A list of laboratories qualified to conduct established drug tests;
- (6) A list of approved substance abuse treatment providers;
- (7) Procedures for persons undergoing drug testing prior to the collection of body fluid specimens for such testing, so as to provide information regarding the use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test; and
- (8) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and no authorized test examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c)(1) The department shall require a drug test consistent with subsection (b) of this Code section to screen an applicant or recipient

of food stamps at any time a reasonable suspicion exists that such applicant or recipient is using an illegal drug. The department may use any information obtained by the department to determine whether such reasonable suspicion exists, including, but not limited to:

- (A) An applicant's or recipient's demeanor;
- (B) Missed appointments and arrest or other police records;
- (C) Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and
- (D) Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.

(2) The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active and current Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of food stamps who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive food stamps as follows:

(1) For a first positive result, the recipient shall be ineligible for food stamps for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for food stamps for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for food stamps for one year and until he or she tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of possible drug testing based on reasonable suspicion to each individual at the time of application. Dependent children under the age of 18 shall be exempt from the drug testing requirement;

(2) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(3) Require each individual to be tested to sign a written acknowledgment that he or she has received and understands the notice and advice provided under paragraphs (1) and (2) of this subsection;

(4) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for food stamps for one year pursuant to paragraph (3) of subsection (d) of this Code section that the individual may reapply for food stamps six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(7) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied food stamps for one year may reapply for food stamps after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails a drug test administered pursuant to subsection (c) of this Code section may reapply for food stamps under this subsection only once.

(g) If a parent is deemed ineligible for food stamps as a result of failing a drug test conducted under this Code section, the parent may choose to designate another individual to receive food stamps for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall be subject to possible drug testing based on a reasonable suspicion. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test performed according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the intellectually or developmentally disabled, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-20, enacted by Ga. L. 2014, p. 844, § 1/HB 772.)

Effective date. — This Code section became effective July 1, 2014.

Cross references. — Drug-free workplace programs, § 34-9-410 et seq.

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U. L. Rev. 205 (2014).

49-4-21. Photo requirement on electronic benefits transfer cards for food stamps.

(a) The department shall require that all electronic benefits transfer cards which include food stamp benefits contain a photograph of one or more members of a household who are authorized to use such food stamp benefits. The department is authorized to promulgate regulations necessary to implement the provisions of this Code section.

(b) This Code section shall become effective on January 1, 2016. (Code 1981, § 49-4-21, enacted by Ga. L. 2014, p. 844, § 1/HB 772.)

Effective date. — This Code section 2014 enactment of this Code section, see
became effective January 1, 2016. 31 Ga. St. U. L. Rev. 205 (2014).
Law reviews. — For article on the

49-4-22. Eligibility for aid under federal Supplemental Nutrition Assistance Program.

(a) An individual who was convicted under any state or federal law of an offense which has as an element the possession, use, or distribution of a controlled substance, as such term is defined in Code Section 16-13-21, and which is or would be classified as a felony under the laws of this state shall not be eligible for the federal Supplemental Nutrition Assistance Program while he or she is serving any term of imprisonment. If such individual was not sentenced to imprisonment, he or she shall be eligible for such program, provided that he or she remains compliant with the applicable general and special conditions of probation imposed. If such individual is sentenced to a term of imprisonment, after release from confinement, he or she shall be eligible for such program, provided that he or she remains compliant with the applicable general and special conditions of probation or parole imposed. If such individual violates the terms of probation as determined by court order or violates the terms of parole as determined by an order of the State Board of Pardons and Paroles, he or she shall lose eligibility for such program. If such individual successfully completes the original sentence imposed, he or she shall remain eligible for such program.

(b) Any individual eligible for aid pursuant to this Code section shall be required to meet all other requirements for eligibility for such program. (Code 1981, § 49-4-22, enacted by Ga. L. 2016, p. 443, § 11-1/SB 367.)

Effective date. — This Code section 2016 enactment of this Code section, see
became effective July 1, 2016. 33 Georgia St. U. L. Rev. 139 (2016).
Law reviews. — For article on the

ARTICLE 2
OLD-AGE ASSISTANCE

49-4-31. Definitions.

As used in this article, the term:

- (1) “Applicant” means a person who has applied for assistance under this article.
- (2) “Assistance” means money payments to, medical care in behalf of, or any type of remedial care recognized under state law in behalf of needy individuals who are 65 years of age or older but shall not

include any such payments to or care in behalf of any individual who is a patient in an institution for tuberculosis or mental health or developmental disability services.

(3) “Medical institution” means an institution that is organized to provide medical, nursing, or convalescent care.

(4) “Public institution” means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(5) “Recipient” means a person who has received assistance under this article. (Ga. L. 1937, p. 311, § 1; Ga. L. 1957, p. 368, § 1; Ga. L. 1962, p. 683, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228; Ga. L. 2018, p. 550, § 3-3/SB 407.)

The 2018 amendment, effective July 1, 2018, in paragraph (2), substituted “shall not include” for “does not include” near the middle, deleted “an inmate of a public institution (except as a patient in a

medical institution) or any individual who is” following “individual who is” in the middle; added paragraphs (3) and (4); and redesignated former paragraph (3) as present paragraph (5).

49-4-32. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any person who:

(1) Is 65 years of age or older;

(2) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(3) Has not made an assignment or transfer of property for the purpose of attaining eligibility for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(4) Has been a bona fide resident of this state for not less than one year; and

(5) Is not receiving assistance under Article 3 of this chapter.

(b) No applicant shall be required to subscribe to a pauper’s oath in order to be eligible for assistance under this article.

(c) Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate’s eligibility for assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of Community Health with the required monetary payment to match the federal matching funds as set forth in

federal law for the services received. (Ga. L. 1937, p. 311, § 2; Ga. L. 2018, p. 550, § 3-4/SB 407.)

The 2018 amendment, effective July 1, 2018, deleted former paragraph (a)(3), which read: “Is not, at the time of receiving assistance, an inmate or patient of any public institution, except as a patient in a medical institution. An inmate or patient of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;”; redesignated former paragraphs (a)(4) through (a)(6) as present paragraphs (a)(3)

through (a)(5), respectively; substituted “attaining eligibility” for “rendering himself eligible” in present paragraph (a)(3); and substituted the present provisions of subsection (c) for the former provisions, which read: “Final conviction of a crime or criminal offense and detention of one so convicted either by this state or by any subdivision thereof shall constitute a forfeiture or suspension of all rights to assistance under this article but only during the period of actual confinement.”

ARTICLE 3

AID TO THE BLIND

49-4-51. Definitions; when person considered blind.

(a) As used in this article, the term:

(1) “Applicant” means a person who has applied for assistance under this article.

(2). “Assistance” means money payments to or hospital care in behalf of needy blind individuals but shall not include any such payments to or care in behalf of any such individual who:

(A) Is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) “Medical institution” means an institution that is organized to provide medical, nursing, or convalescent care.

(4) “Ophthalmologist” means a physician who is licensed to practice medicine in this state and who is actively engaged in the treatment of diseases of the human eye.

(5) “Optometrist” means an individual who is licensed and registered to practice optometry in this state and who is actively engaged in the measurement of the powers of vision of the human eye.

(6) “Public institution” means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(7) "Recipient" means a person who has received assistance under this article.

(8) "Supplementary services" means services other than money payments to blind persons in need.

(b) A person shall be considered blind for the purposes of this article if his vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. The department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this article. (Ga. L. 1937, p. 568, §§ 1, 2; Ga. L. 1952, p. 233, § 1; Ga. L. 1957, p. 368, § 4; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228; Ga. L. 2018, p. 550, § 3-5/SB 407.)

The 2018 amendment, effective July 1, 2018, substituted the present provisions of paragraph (a)(2) for the former provisions, which read: "Assistance means money payments to or hospital care in behalf of needy blind individuals but does not include any such payments to or care in behalf of any such individual who is an inmate of a public institution

(except as a patient in a medical institution) nor any individual who:"; added paragraph (a)(3); redesignated former paragraphs (a)(3) and (a)(4) as present paragraphs (a)(4) and (a)(5), respectively; added paragraph (a)(6); and redesignated former paragraphs (a)(5) and (a)(6) as present paragraphs (a)(7) and (a)(8), respectively.

49-4-52. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any blind person who:

(1) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health, except that, after March 1, 1961, in making such determination, the first \$85.00 per month of earned income plus one-half of earned income in excess of \$85.00 per month shall be disregarded;

(2) Has been a bona fide resident of the state for not less than one year;

(3) Is not receiving old-age assistance; and

(4) Is not publicly soliciting alms in any part of this state by the wearing, carrying, or exhibiting of signs denoting blindness, by the carrying of receptacles for the reception of alms, by the doing of such acts by proxy, or by begging from house to house.

(b) Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate's eligibility for

assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of Community Health with the required monetary payment to match the federal matching funds as set forth in federal law for the services received. (Ga. L. 1937, p. 568, § 3; Ga. L. 1952, p. 233, §§ 4, 6; Ga. L. 1961, p. 415, § 1; Ga. L. 1965, p. 385, § 19; Ga. L. 2018, p. 550, § 3-6/SB 407.)

The 2018 amendment, effective July 1, 2018, substituted the present provisions of subsection (b) for the former provisions, which read: “All assistance under this article shall be suspended in the event of and during the period of confinement in any public penal institution after final conviction of a crime against the laws of this state or any political subdivision thereof.”

ARTICLE 4

AID TO THE DISABLED

49-4-80. Definitions.

As used in this article, the term:

- (1) “Applicant” means a person who has applied for assistance under this article.
- (2) “Assistance” means money payments to, or hospital care in behalf of, needy individuals who are totally and permanently disabled but does not include any individual:
 - (A) Who is a patient in an institution for tuberculosis or mental illness or developmental disability; or
 - (B) Who has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.
- (3) “Medical institution” means an institution that is organized to provide medical, nursing, or convalescent care.
- (4) “Public institution” means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.
- (5) “Recipient” means a person who has received assistance.
- (6) “Totally and permanently disabled” means any person not less than 18 nor more than 65 years of age who has a medically demonstrable disability which is permanent and which renders him incapable of performing any gainful occupation within his competence. (Ga. L. 1952, p. 15, § 1; Ga. L. 1957, p. 368, § 6; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228; Ga. L. 2018, p. 550, § 3-7/SB 407.)

The 2018 amendment, effective July 1, 2018, substituted the present provisions of paragraph (2) for the former provisions, which read: “Assistance’ means money payments to, or hospital care in behalf of, needy individuals who are totally and permanently disabled but does not include any such payments to or care

in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual.”; added paragraphs (3) and (4); and redesignated former paragraphs (3) and (4) as present paragraphs (5) and (6), respectively.

49-4-81. Eligibility for assistance under this article.

(a) Assistance is to be granted under this article to any person who:

(1) Is not less than 18 nor more than 65 years of age;

(2) Is totally and permanently disabled as that term is defined in Code Section 49-4-80;

(3) Does not have sufficient income or other resources to provide a subsistence compatible with decency and health;

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(5) Has been a bona fide resident of the state for not less than one year; and

(6) Is not receiving old-age assistance, aid to the blind, or aid to dependent children.

(b) No applicant shall be required to subscribe to a pauper’s oath in order to be eligible for assistance under this article.

(c) Inmates of any public institution meeting the requirements of subsection (a) of this Code section may be granted assistance, provided such public institution has entered into an agreement with the Department of Community Health to determine an inmate’s eligibility for assistance and services. Such agreement shall require the public institution or medical institution providing services to such inmate to provide the Department of Community Health with the required monetary payment to match the federal matching funds as set forth in federal law for the services received. (Ga. L. 1952, p. 15, § 2; Ga. L. 1964, p. 665, § 1; Ga. L. 2018, p. 550, § 3-8/SB 407.)

The 2018 amendment, effective July 1, 2018, added subsection (c).

ARTICLE 7

MEDICAL ASSISTANCE GENERALLY

Law reviews. — For note, “Charting the Middle Course: An Argument for Robust But Well-Tailored Health Care Discrimination Protection for the Transgender Community,” see 52 Ga. L. Rev. 225 (2017).

49-4-142. Department of Community Health established; adoption, administration, and modification of state plan; drug application fees; personal needs allowance.

(a) The Department of Community Health established under Chapter 2 of Title 31 is authorized to adopt and administer a state plan for medical assistance in accordance with Title XIX of the federal Social Security Act, as amended (Act of July 30, 1965, P.L. 89-97, 79 Stat. 343, as amended), provided such state plan is administered within the appropriations made available to the department. The department is authorized to establish the amount, duration, scope, and terms and conditions of eligibility for and receipt of such medical assistance as it may elect to authorize pursuant to this article. Further, the department is authorized to establish such rules and regulations as may be necessary or desirable in order to execute the state plan and to receive the maximum amount of federal financial participation available in expenditures made pursuant to the state plan; provided, however, that the department shall establish reasonable procedures for notice to interested parties and an opportunity to be heard prior to the adoption, amendment, or repeal of any such rule or regulation. The department is authorized to enter into such reciprocal and cooperative arrangements with other states, persons, and institutions, public and private, as it may deem necessary or desirable in order to execute the state plan.

(b) The department shall, not later than June 1, 1986, implement a modification of the state plan for medical assistance or any affected rules or regulations of the department, which modification will allow supplementation by relatives or other persons for a private room or private sitter or both for a recipient of medical assistance in a nursing home. The modification to the plan or to any affected rules and regulations shall be effective unless and until federal authorities rule that such modification is out of compliance with federal regulations. Such modification of the state plan for medical assistance or rules and regulations:

(1) Shall provide that a provider of nursing home services in either a skilled care facility or an intermediate care facility shall be obligated to provide a recipient of medical assistance only semiprivate accommodations which meet the other requirements of appropriate regulations;

(2) Shall provide that at no time can more than 10 percent of a skilled care or intermediate care facility's rooms be used for Medicaid recipients for whom a private room supplementation has been made;

(3) Shall provide that payments made by relatives or other persons to a provider of medical assistance for the specific stated purpose of paying the additional costs for a private room or private sitter or both for a recipient of medical assistance in a skilled care facility or intermediate care facility shall not be considered as income when determining the amount of patient liability toward vendor payments; provided, however, that the department's entitlement to payments made by legally liable third parties shall not be diminished by this modification of the state plan;

(4) Shall provide that no provider of medical assistance shall discriminate against a recipient of medical assistance who does not have a relative or other person who is willing and able to provide supplementation; but the provision of a private room or private sitter to a recipient when supplementation is provided shall not constitute discrimination against other recipients;

(5) Shall provide that no recipient who is transferred to or admitted to a private room because of a shortage of beds in semiprivate rooms shall be discharged because the recipient does not have a relative or other person who is willing and able to provide supplementation; and

(6) May provide that the rate charged by the provider of medical assistance to the relative or other person providing supplementation for a private room for a recipient shall not exceed the difference between the maximum rate charged by the provider for a private room to or for a private pay patient and the amount which the provider receives or will receive from the department as reimbursement for otherwise providing for the recipient's care in a semiprivate room.

(c) The department is authorized to establish drug application fees which shall be equal to the department's cost of investigating and determining whether a new drug product should be included in the Controlled Medical Assistance Drug List. Such fees shall be adjusted annually and shall be paid by the drug manufacturers at the time of application.

(d) The department shall, upon state appropriations, implement a modification of the state plan for medical assistance or any affected rules or regulations of the department, which modification shall provide that, in determining the amount of a recipient's income that is to be applied to payment for the costs of care in a nursing home, there shall be deducted a personal needs allowance of not less than \$70.00 per

month which shall include the minimum amount required by 42 U.S.C. Section 1396a(q)(2). (Ga. L. 1977, p. 384, § 4; Ga. L. 1984, p. 1647, § 1; Ga. L. 1985, p. 517, § 1; Ga. L. 1986, p. 486, § 1; Ga. L. 1990, p. 1808, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 1999, p. 296, § 18; Ga. L. 2009, p. 453, §§ 1-7, 1-52/HB 228; Ga. L. 2017, p. 219, § 3/HB 206; Ga. L. 2018, p. 1112, § 49/SB 365.)

The 2017 amendment, effective July 1, 2017, added subsection (d).

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted

“provided, however, that the department shall” for “provided, however, the department shall” in the proviso at the end of the third sentence of subsection (a).

JUDICIAL DECISIONS

Exhaustion of administrative remedies required. — In an action involving a dispute over Medicaid reimbursement rates, the plaintiffs were not excused from the exhaustion of administrative remedies requirement because the plaintiffs were required to raise the plaintiffs’ defec-

tive notice claims in the administrative review process in the first instance and O.C.G.A. § 49-4-153 governed that administrative review process. *Ga. Dep’t of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc.*, 298 Ga. 779, 784 S.E.2d 781 (2016).

49-4-142.2. Expansion of Medicaid eligibility through an increase in the income threshold.

On and after July 1, 2014, neither the department, the board, nor any other representative of the state shall expand Medicaid eligibility under this article through an increase in the income threshold without prior legislative approval; provided, however, that this shall not apply to any increase resulting from a cost-of-living increase in the federal poverty level. The legislative approval required under this Code section shall be by Act of the General Assembly or the adoption of a joint resolution of the General Assembly. (Code 1981, § 49-4-142.2, enacted by Ga. L. 2014, p. 293, § 2/HB 990.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, “July 1, 2014” was substituted for “the effective date of this Code section” at the beginning of the Code section.

Editor’s notes. — Ga. L. 2014, p. 293, § 1/HB 990, not codified by the General Assembly, provides that: “WHEREAS, the General Assembly is constitutionally mandated to balance the Georgia state budget through the annual appropriations process; and

“WHEREAS, the Medicaid program

comprises one of the largest expenditures of state funds in the annual budget; and

“WHEREAS, any decision to increase the income threshold for eligibility for the Medicaid entitlement program in Georgia must be carefully considered within the context of the state’s responsibility to fund other critical state services, including education, infrastructure, and public safety; and

“WHEREAS, Governor Nathan Deal has demonstrated fiscal responsibility throughout his first term in office; and

“WHEREAS, Governor Deal has recently declined to expand Medicaid eligi-

bility through an increase in the income threshold in Georgia's Medicaid program despite efforts by the federal government to compel states to expand this entitlement program through provisions of the Affordable Care Act; and

"WHEREAS, expanding Medicaid eligibility by increasing the income threshold for the Medicaid entitlement program would dramatically increase the number of Georgians receiving public assistance that otherwise do not qualify for Medicaid benefits by meeting low income program requirements for aged, blind, and disabled individuals; for families or children age 18 and under; for aged, blind, and disabled individuals receiving nursing home care; for individuals receiving hospice care; for pregnant women; or for individuals with

breast or cervical cancer; or by meeting other program requirements for children in foster care or adopted from foster care or for children with disabilities receiving services under a federal Deeming waiver; and

"WHEREAS, in support of Governor Deal's stance against this effort to oblige states to expand the income threshold for Medicaid benefits and, in an effort to assure any similar efforts by the federal government are seriously evaluated in the future, the General Assembly determines it is essential that a potential expansion of eligibility for Medicaid be thoroughly debated and voted upon by the legislature."

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U. L. Rev. 191 (2014).

49-4-146.1. Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations; notifications; authorization to obtain income eligibility verification.

JUDICIAL DECISIONS

Statute not vague. — O.C.G.A. § 49-4-146.1(b)(2), as applied, was not unconstitutionally vague as the procedures for which one would not be entitled to payment through the program were listed in the Medicaid manual, which, in conjunction with the statute, provided the defendant with appropriate notice as required by law. *Malloy v. State*, 293 Ga. 350, 744 S.E.2d 778 (2013).

Indictment defective for failing to list specific dates. — Trial court erred in overruling the defendant's special demurrer with regard to portions of the indictment that contended that the Medicaid fraud and theft by taking crimes were committed over a range of 38 months because the specific dates were known to

the state and the indictment should have listed those dates due to the number of alleged acts. *Cole v. State*, 334 Ga. App. 752, 780 S.E.2d 406 (2015).

Jury instructions. — In defendant's trial for Medicaid fraud in violation of O.C.G.A. § 49-4-146.1(b)(1), the trial court did not err in reading the entire statute to the jury, although the defendant was only charged with fraud by engaging in a fraudulent scheme and device, because the indictment was read to the jury and sent out with the jury, and the trial court noted that the jury was limited to convicting the defendant if the defendant acted as charged. *Wright v. State*, 327 Ga. App. 451, 757 S.E.2d 890 (2014).

RESEARCH REFERENCES

ALR. — State criminal prosecution against medical practitioner for fraud in connection with claims under Medicaid,

Medicare, or similar welfare program for providing medical services, 79 A.L.R.6th 125.

49-4-146.3. Civil forfeiture of property and proceeds obtained through Medicaid fraud.

(a) As used in this Code section, the term:

(1) “Civil forfeiture proceeding” shall have the same meaning as set forth in Code Section 9-16-2.

(2) “Medicaid fraud” means:

(A) A violation of Code Section 49-4-146.1; or

(B) A violation relating to the obtaining of medical assistance benefits or payments under this article of any provision of:

(i) Chapter 8 of Title 16, relating to offenses involving theft;

(ii) Code Section 16-10-20, relating to false statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions; or

(iii) Code Section 16-10-21, relating to conspiracy to defraud the state or its political subdivisions.

(3) “Proceeds” shall have the same meaning as set forth in Code Section 9-16-2.

(4) “Property” shall have the same meaning as set forth in Code Section 9-16-2:

(b) Any property which is directly or indirectly obtained by a person or entity through or as a result of Medicaid fraud in the provision of services or equipment under this article and any proceeds shall be subject to civil forfeiture proceedings in accordance with Chapter 16 of Title 9. This Code section shall not apply to cases involving alleged fraud by Medicaid recipients in obtaining medical assistance benefits. (Code 1981, § 49-4-146.3, enacted by Ga. L. 1997, p. 1596, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 2; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1225, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 362, § 36; Ga. L. 2015, p. 693, § 3-29/HB 233.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. See Editor’s notes for applicability.

Editor’s notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture

that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure.”

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 1 (2015).

49-4-147.1. Claims by department against estate of Medicaid recipients.

(a) In accordance with applicable federal law and regulations, including those under Title XIX of the federal Social Security Act, the department may make claim against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf by the department. A claim shall be made against the estate of a deceased Medicaid recipient only if at the time of application for medical assistance the applicant received written notice that the medical assistance costs could be recovered from the applicant's estate and the applicant signed a written acknowledgment of receipt of such notice, the estate is otherwise subject to recovery, and if no hardship or other exemption exists. The commissioner shall waive such claim if he or she determines enforcement of the claim would result in substantial and unreasonable hardship to dependents of the individual against whose estate the claim exists.

(b) The estate recovery program established pursuant to this Code section shall not be effective any earlier than May 3, 2006. In no event shall the department make claims against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf prior to May 3, 2006.

(c) The commissioner shall delay execution of a claim against the estate where the dependents or heirs agree to pay the full amount of the claim in reasonable installments.

(d) To prevent substantial and unreasonable hardship, the commissioner shall waive any claim against the first \$25,000.00 of any estate. No later than July 1, 2018, the department shall submit to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services an amendment to the state plan reflecting the provisions of this subsection. In the event that such amendment to the state plan is not approved, this subsection shall stand repealed in its entirety. (Ga. L. 1981, p. 917, § 1; Ga. L. 2006, p. 775, § 3/SB 572; Ga. L. 2018, p. 244, § 1/SB 370.)

The 2018 amendment, effective July 1, 2018, added subsection (d).

49-4-151.1. Errors or omissions in reporting; right to hearing; exclusion.

(a) Any clerical or record-keeping error, including but not limited to a typographical error, scrivener's error, or computer error; any unintentional error or omission in billing, coding, or required documentation; or any isolated instances of incomplete documentation by a

provider of medical assistance regarding reimbursement for medical assistance may not in and of itself constitute fraud or constitute a basis to recoup payment for medical assistance provided, so long as any such errors or instances do not result in an improper payment. An improper payment includes any payment that was made to an ineligible recipient, payment for noncovered services, duplicate payments, payments for services not received, payments that are for the incorrect amount, and instances when the department is unable to discern whether a payment was proper because of insufficient or lack of documentation. The department or its agents shall not recoup the cost of medical assistance if such error, omission, or incomplete documentation has been resolved in accordance with subsection (b) of this Code section; provided, however, that recoupment shall be allowed to the extent that the error, omission, or incomplete documentation resulted in an improper payment, though recoupment shall be limited to the amount improperly paid.

(b) A provider of medical assistance shall be allowed 30 calendar days following receipt by the provider of a preliminary audit review report in which to submit records or documents to correct an error or omission or to complete documentation identified in such review report; provided, however, that the department or its agents, in the discretion of the department, may reject the submission of a corrected record or document if the submission would result in an improper payment, or the provider demonstrates a pattern of repeated errors, omissions, or incomplete documentation. The department shall be authorized to establish rules and regulations delineating what constitutes a pattern of repeated errors, omissions, or incomplete documentation taking into consideration the type of provider; frequency of audits; volume of claims submitted by a provider; type of error, omission, or incomplete documentation; and other pertinent factors.

(c) A provider of medical assistance shall be afforded the right to a hearing in accordance with Code Section 49-4-153 for any attempted withholding of reimbursement or recoupment by the department or its agents relating to an error, omission, incomplete documentation, or improper payment relating to the provision of medical assistance.

(d) This Code section shall not apply to criminal or civil investigations which involve fraud, willful misrepresentation, reckless disregard, or abuse conducted by the Attorney General's Medicaid Fraud Control Unit or other law enforcement agencies. (Code 1981, § 49-4-151.1, enacted by Ga. L. 2017, p. 219, § 2/HB 206.)

Effective date. — This Code section became effective July 1, 2017.

49-4-152.5. Restocking fees.

In the provision of medical assistance pursuant to this article, the department shall allow for the payment and coverage of appropriate restocking fees incurred by a pharmacy which receives and dispenses unused over-the-counter and prescription drugs pursuant to Article 10 of Chapter 8 of Title 31. (Code 1981, § 49-4-152.5, enacted by Ga. L. 2006, p. 152, § 2/HB 1178; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2016, p. 524, § 3/HB 897.)

The 2016 amendment, effective July 1, 2016, substituted “unused over-the-counter and prescription drugs pursuant to Article 10 of Chapter 8 of Title 31” for “prescription drugs pursuant to Article 11 of Chapter 4 of Title 26, the ‘Utilization of Unused Prescription Drugs Act’” at the end of this Code section.

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.

JUDICIAL DECISIONS

Exhaustion of administrative remedies.

In an action involving a dispute over Medicaid reimbursement rates, the plaintiffs were not excused from the exhaustion of administrative remedies requirement because the plaintiffs were required to raise the plaintiffs’ defective notice claims in the administrative review process in

the first instance and O.C.G.A. § 49-4-153 governed that administrative review process. Ga. Dep’t of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc., 298 Ga. 779, 784 S.E.2d 781 (2016).

Cited in Cazier v. Georgia Power Company, 339 Ga. App. 506, 793 S.E.2d 668 (2016).

49-4-158. Certain dependents of military service members to maintain eligibility and priority for certain medical assistance and developmental disability services under certain conditions; waiver to implement such provision; compliance with certain federal laws, rules, and regulations; definitions.

(a) As used in this Code section, the term:

(1) “Dependent” means a spouse, birth child, adopted child, or stepchild of a military service member.

(2) “Legal resident” means a person who maintains Georgia as his or her principal establishment, home of record, or permanent home and to where, whenever absent due to military obligation, he or she intends to return.

(3) “Military service” means service in the armed forces or armed forces reserves of the United States, or membership in the Georgia National Guard.

(4) "Military service member" means a person who is currently in military service or who has separated from military service in the previous 18 months through either retirement or military separation.

(b) The department shall allow legal residents who are dependents of a military service member and who are absent from this state due to the member's military service to be added to a data base to indicate the need for medical assistance upon return to this state. Should a dependent in such a situation be selected from a data base to receive medical assistance, the dependent shall have six months from the date of the selection notification to apply for such assistance and another six months to commence using such assistance. In the event a dependent is receiving medical assistance funded by the department and the medical assistance is disrupted due to the military service member's need for the dependent to leave Georgia because of such military service member's military service, the medical assistance shall be resumed upon the dependent's return to Georgia if the dependent is otherwise eligible. In no case shall payment be made for home and community based services provided outside this state. A dependent of a military service member shall be required to provide the department with:

(1) A copy of the military service member's DD-214 or other equivalent discharge paperwork; and

(2) Proof of the military service member's legal residence in this state, as prescribed by the department.

(c) A dependent who is a legal resident of this state, having previously been determined to be eligible for developmental disability services provided by the department, including waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for those developmental disability services as long as he or she remains a legal resident of this state, regardless of having left this state due to the military service member's military assignment outside this state, as long as he or she is otherwise eligible for such services.

(d) The department shall permit a dependent who resides outside this state to be placed on a waiting list for developmental disability services if the dependent left this state due to the military service member's military assignment outside this state, is otherwise eligible for those services, and furnishes:

(1) A copy of the military service member's DD-214 or other equivalent discharge paperwork; and

(2) Proof of the military service member's legal residence in this state, as prescribed by the department.

(e) For dependents who received developmental disability services and who left this state due to the military service member's military

assignment outside this state, upon the dependent's return to this state and when a request for services is made, the department shall:

(1) Determine the dependent's eligibility for services, which may include a request for waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act;

(2) Provide to the dependent notification of the determination of eligibility for services, which includes notification of a denial of services if applicable;

(3) Provide the dependent an opportunity to contest the department's determination through the appeals processes established by the department; and

(4) Resume services if the dependent remains eligible.

(f) As a condition of continued eligibility for services under subsection (e) of this Code section, a dependent must inform the department of his or her current address and provide updates as requested by the department.

(g) No payment pursuant to this Code section shall be made for developmental disability services authorized under this chapter and provided outside this state unless those services satisfy the conditions specified in 42 CFR 431.52. No payment pursuant to this Code section shall be made for home and community based services provided outside this state.

(h) The department shall request a waiver from the appropriate federal agency if a waiver is necessary to implement the provisions of this Code section.

(i) The department may adopt rules and regulations necessary to implement the provisions of this Code section.

(j) This Code section shall only apply to the fullest extent permissible for Georgia to remain in compliance with all federal laws, rules, and regulations associated with the services provided in this chapter. (Code 1981, § 49-4-158, enacted by Ga. L. 2016, p. 337, § 3-1/HB 962; Ga. L. 2018, p. 1112, § 49/SB 365.)

Effective date. — This Code section became effective July 1, 2016.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modern-

ize, and correct the Code, substituted "developmental disability" for "developmental disabilities" in subsection (d).

ARTICLE 7B
FALSE MEDICAID CLAIMS

49-4-168. Definitions.

JUDICIAL DECISIONS

Suit barred by res judicata. — Dismissal of the plaintiffs’ suit brought under the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168 et seq., was affirmed because the suit was barred by res judicata based on an earlier-filed federal suit against the same pharmaceutical companies for similar claims. *Jordan v. State of Ga.*, 336 Ga. App. 345, 785 S.E.2d 27 (2016).

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.

- (a) Any person who:
 - (1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;
 - (2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
 - (3) Conspires to commit a violation of paragraph (1), (2), (4), (5), (6), or (7) of this subsection;
 - (4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and knowingly delivers, or causes to be delivered, less than all of such property or money;
 - (5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or
 - (7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit property or money to the Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit property or money to the Georgia Medicaid program,

shall be liable to the State of Georgia for a civil penalty consistent with the civil penalties provision of the federal False Claims Act, 31 U.S.C.

3729(a), as adjusted by the federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461; Public Law 101-410), and as further amended by the federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (Sec. 701 of Public Law 114-74), plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

(d) As used in this Code section, the term "Georgia Medicaid program" includes any contractor, subcontractor, or agent for the Georgia Medicaid program, including, but not limited to, a managed care program operated, funded, or reimbursed by the Georgia Medicaid program. (Code 1981, § 49-4-168.1, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127, § 2-1/HB 822; Ga. L. 2014, p. 77, § 1/HB 973; Ga. L. 2018, p. 240, § 1/SB 321.)

The 2014 amendment, effective April 15, 2014, substituted the present provisions of paragraph (a)(3) for the former provisions, which read: "Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid" and added subsection (d).

The 2018 amendment, effective May

3, 2018, substituted the present provisions of the ending undesignated language of subsection (a) for the former provisions, which read: "shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of

damages which the Georgia Medicaid program sustains because of the act of such person.”

49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation; stay of discovery; receipt of proceeds.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

- (A) Limiting the number of witnesses the person may call;
- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be

based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not

prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(k) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(l)(1) As used in this subsection, the term "original source" means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to publicly disclosed allegations or transactions and who has voluntarily provided such information to the Attorney General before filing a civil action under this Code section.

(2) The court shall dismiss a civil action or claim under this Code section, unless opposed by the Attorney General, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a legislative or other Georgia report, hearing, audit, or investigation; or

(C) From the news media,

unless the civil action is brought by the Attorney General or the person bringing the civil action is an original source of the information. (Code 1981, § 49-4-168.2, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2012, p. 127,

§ 2-1/HB 822; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2014, p. 77, § 2/HB 973.)

The 2014 amendment, effective April 15, 2014, substituted “legislative or other Georgia” for “congressional, legislative, or other state or federal” in subparagraph (1)(2)(B).

JUDICIAL DECISIONS

Suit barred by res judicata. — Dismissal of the plaintiffs’ suit brought under the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168 et seq., was affirmed because the suit was barred by res judicata based on an earlier-filed federal suit against the same pharmaceutical companies for similar claims. *Jordan v. State of Ga.*, 336 Ga. App. 345, 785 S.E.2d 27 (2016).

49-4-168.4. Protection of employees from discrimination; relief; statute of limitations.

JUDICIAL DECISIONS

Failure to show that individual responsible for termination knew of plaintiff’s claim. — Summary judgment was properly granted to all the defendants on the plaintiff’s retaliation claim under the Georgia False Medicaid Claim Act, O.C.G.A. § 49-4-168, et seq., because the plaintiff failed to show that the CEO of a physicians services group and a hospital was aware of the plaintiff’s complaint under the Stark Act, 42 U.S.C. § 1395nn, at the time the CEO decided to terminate the plaintiff as the plaintiff did not make the plaintiff’s Stark Act complaint directly to the CEO; the administrative manager for the physician services group did not testify that the manager advised the CEO about the plaintiff’s complaint of a potential Stark Act violation; and the CEO never stated in the CEO’s deposition that the CEO was aware of the plaintiff’s complaint. *Murray v. Community Health Systems Professional Corp.*, No. A17A2112, 2018 Ga. App. LEXIS 158 (Mar. 5, 2018).

ARTICLE 9

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

49-4-193. Drug test required for certain TANF applicants or recipients; ineligibility for benefits based upon positive tests; drug treatment; impact of drug use by parents on children; confidentiality; exceptions.

(a) As used in this Code section, the term “established drug test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the United States Department of Health and Human Services or other professionally valid procedures approved by the department; provided, however, that where possible and practicable, a swab test shall be used in lieu of a urinalysis.

(b) The department shall adopt rules and regulations for an established drug test which shall include the following:

- (1) Which illegal drugs will be the subject of testing;
- (2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;
- (3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;
- (5) A list of laboratories qualified to conduct established drug tests;
- (6) A list of approved substance abuse treatment providers;
- (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid specimens for such testing, to provide information regarding use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test; and
- (8) A requirement that any applicant who demonstrates proof of active and current Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and no authorized test examiner shall conduct a drug test if an applicant demonstrates active and current Medicaid benefits unless the applicant presents a receipt proving that he or she has paid the required drug screening application fee. Eligible applicants who do not have active and current Medicaid benefits shall be responsible for paying the full cost of administering the drug test upon presentation to an authorized examiner.

(c)(1) The department shall require a drug test consistent with subsection (b) of this Code section to screen an applicant or recipient at any time a reasonable suspicion exists that such applicant or recipient is using an illegal drug. The department may use any information obtained by the department to determine whether such reasonable suspicion exists, including, but not limited to:

- (A) An applicant's or recipient's demeanor;
- (B) Missed appointments and arrest or other police records;
- (C) Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and
- (D) Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior

drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.

(2) The cost of drug testing shall be the responsibility of the individual tested, provided that the individual does not submit proof of active and current Medicaid benefits to subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this Code section. No assistance payment shall be delayed because of the requirements of this Code section, and any payments made prior to the department's receipt of a test result showing a failure shall be recoverable.

(d) Any recipient of cash assistance under this article who tests positive for controlled substances as a result of a drug test required under this Code section shall be ineligible to receive TANF benefits as follows:

(1) For a first positive result, the recipient shall be ineligible for TANF benefits for one month and until he or she tests negative in a retest;

(2) For a second positive result, the recipient shall be ineligible for TANF benefits for three months and until he or she tests negative in a retest; and

(3) For a third and each subsequent positive result, the recipient shall be ineligible for TANF benefits for one year and until he or she tests negative in a retest unless the individual meets the requirements of subsection (f) of this Code section.

(e) The department shall:

(1) Provide notice of possible drug testing based on reasonable suspicion to each individual at the time of application. Dependent children under the age of 18 are exempt from the drug testing requirement;

(2) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over the counter medication he or she is taking;

(3) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (1) and (2) of this subsection;

(4) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests;

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of this Code section that the individual may reapply for those benefits six months after the date of the positive drug test if he or she meets the requirements of subsection (f) of this Code section; and

(7) Provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state shall be responsible for providing or paying for substance abuse treatment.

(f) An individual who tests positive for an illegal drug and is denied TANF benefits for one year may reapply for TANF benefits after six months if the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department. The cost of any drug testing provided under this Code section and substance abuse treatment shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (c) of this Code section may reapply for TANF benefits under this subsection only once.

(g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this Code section:

(1) The dependent child's eligibility for TANF benefits shall not be affected;

(2) An appropriate protective payee shall be designated to receive benefits on behalf of the child; and

(3) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual approved by the department. The designated individual shall be subject to possible drug testing based on a reasonable suspicion. If the designated individual tests positive for controlled substances, he or she shall be ineligible to receive benefits on behalf of the child.

(h) The results of any drug test done according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed to any

person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed and deleted five years after the date of the test.

(i) No testing shall be required by the provisions of this Code section for any person whom the department determines is significantly hindered, because of a physical or mental handicap or developmental disability, from doing so or for any person enrolled in an enhanced primary care case management program operated by the Department of Community Health, Division of Medical Assistance to serve frail elderly and disabled beneficiaries to improve the health outcomes of persons with chronic health conditions by linking primary medical care with home and community based services. In addition, no testing shall be required by the provisions of this Code section for any individuals receiving or on a waiting list for long-term services and supports through a non-Medicaid home and community based services program or for any individual residing in a facility such as a nursing home, personal care home, assisted living community, intermediate care facility for the intellectually or developmentally disabled, community living arrangement, or host home.

(j) The department shall adopt rules to implement this Code section. (Code 1981, § 49-4-193, enacted by Ga. L. 2012, p. 91, § 3/HB 861; Ga. L. 2014, p. 844, § 2/HB 772; Ga. L. 2014, p. 866, § 49/SB 340; Ga. L. 2015, p. 385, § 4-13/HB 252.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted “established by the United States Department of Health and Human Services” for “(53 C.F.R. 11979, et seq., as amended)” in the middle of subsection (a); rewrote subsections (b), (c), and (e); deleted the former second and third sentences of subsection (f), which read: “An individual who has met the requirements of this subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the requirements of subsection (c) of this Code section. Any drug test conducted while the individual is undergoing substance abuse treatment shall meet the requirements of subsection (b) of this Code section.”; and substituted “shall be subject to possible drug testing based on a reasonable suspicion” for “shall also undergo drug testing before being approved to receive benefits on behalf of the

child” in the third sentence of paragraph (g)(3). The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “Mandatory Guidelines for Federal Workplace Drug Testing Programs” for “Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979, et seq., as amended)” in subsection (a).

The 2015 amendment, effective July 1, 2015, substituted “intellectually or developmentally disabled” for “mentally retarded” in subsection (i).

Editor’s notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 205 (2014).

CHAPTER 4A

DEPARTMENT OF JUVENILE JUSTICE

Sec.		Sec.	
49-4A-2.	Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; responsibilities and duties.		turn of mentally ill or developmentally disabled children; escapees; discharge; evidence of commitment; records; restitution.
49-4A-7.	Powers and duties of department.	49-4A-11.	Aiding or encouraging child to escape; hindering apprehension of child.
49-4A-8.	Commitment of delinquent children; procedure; cost; re-	49-4A-12.	Special school district.

49-4A-2. Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; responsibilities and duties.

(a)(1) There is created a Board of Juvenile Justice which shall establish the general policy to be followed by the Department of Juvenile Justice created in this chapter. The Board of Juvenile Justice shall be the successor entity to the Board of Children and Youth Services and the change is intended to be one of name only. The board shall consist of 15 members, with at least one but not more than two from each congressional district in the state, appointed by the Governor and confirmed by the Senate. The Governor shall make such appointments with a view toward achieving minority representation, representation of women, and equitable geographic representation on the board.

(2) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; three members shall be appointed for three years; three members shall be appointed for four years; and three members shall be appointed for five years. Thereafter, all succeeding appointments shall be for five-year terms from the expiration of the previous term.

(3) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(4) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(5) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards.

(b) The board shall:

(1) Provide leadership in developing programs to successfully rehabilitate delinquent children committed to the state's custody;

(2) Provide technical assistance to private and public entities for prevention programs for children at risk;

(3) Ensure that detention assessment, risk assessment, and risk and needs assessment instruments that are utilized by intake personnel and courts are developed in consultation with the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, and the Council of Juvenile Court Judges and ensure that such instruments are validated at least every five years;

(4) Adopt rules and regulations governing the management and treatment of children committed to the department to ensure that evidence based programs or practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to placing a committed child in a facility or into the community, preparing a child's release into the community, and managing children probationers in the community;

(5) Require the department to collect and analyze data and performance outcomes, including, but not limited to, data collected and maintained pursuant to subsection (n) of Code Section 49-4A-8 and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Judiciary Non-civil and the Senate Judiciary Committee; and

(6) Adopt rules and regulations governing the transfer of children who are at least 17 years of age and are released from restrictive custody due to an adjudication for a Class A designated felony act or Class B designated felony act, as such terms are defined in Code Section 15-11-2, to the Department of Community Supervision to ensure balanced attention to the protection of the community, the imposition of accountability, and the development of competencies to enable each child to become a responsible and productive member of the community, taking into consideration a child's level of participation in the department's educational, vocational, and other services prior to such release.

(c) The board shall perform duties required of it by this chapter and shall, in addition thereto, be responsible for promulgation of all rules

and regulations not in conflict with this chapter that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this chapter, and to the performance of the duties and functions of the department as set forth in this chapter.

(d) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this chapter and to restore and build up the self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Code 1981, § 49-4A-2, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 5; Ga. L. 2013, p. 294, § 3-2/HB 242; Ga. L. 2014, p. 866, § 49/SB 340; Ga. L. 2015, p. 890, § 6/HB 263; Ga. L. 2016, p. 443, § 12-1/SB 367.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “Senate Judiciary Committee” for “Senate State Judiciary Committee” at the end of paragraph (b)(5).

The 2015 amendment, effective July 1, 2015, inserted “, the Criminal Justice Coordinating Council,” in paragraph (b)(3).

The 2016 amendment, effective July 1, 2016, in subsection (b), deleted “and” at the end of paragraph (b)(4), substituted “; and” for a period at the end of paragraph (b)(5), and added paragraph (b)(6).

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 139 (2016).

49-4A-7. Powers and duties of department.

(a) The department shall be authorized to:

(1) Accept for detention in a juvenile detention facility any child who is committed to the department under Article 6 of Chapter 11 of Title 15;

(2) Provide probation and other court services for children pursuant to a request from a court under Article 6 of Chapter 11 of Title 15;

(3) Provide casework services and care or payment of maintenance costs for children who have run away from their home communities within this state or from their home communities in this state to another state or from their home communities in another state to this state; pay the costs of returning such runaway children to their home communities; and provide such services, care, or costs for runaway children as may be required under Chapter 4B of Title 49;

(4) Enter into contracts and cooperative agreements with federal, state, county, and municipal governments and their agencies and departments; enter into contracts with public and private institutions and agencies of this and other states; enter into leases with private vendors selected to operate programs on behalf of the department which shall run concurrently with the department's service contracts; provided, however, that any such lease shall provide that if the property which is the subject of the lease is sold and conveyed during the term of the lease, such lease shall expire by operation of law 90 days after the closing of such sale and conveyance; and enter into contracts with individuals, as may be necessary or desirable in effectuating the purposes of this chapter; and

(5) Solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes.

(b) When given legal custody over a child for detention in a juvenile detention facility under court order under Article 6 of Chapter 11 of Title 15, the department shall have:

(1) The right of physical possession of such child;

(2) The right and duty to protect, train, and discipline such child;

(3) The responsibility to provide such child with food, clothing, shelter, and education;

(4) The right to determine in which facility such child shall live and to transfer such child as provided in subsection (b) of Code Section 42-5-52; and

(5) The right and duty to provide or obtain for such child medical, hospital, psychiatric, surgical, or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.

(c) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner; provided, however, that any contract or agreement that provides services to delinquent children shall be a performance based contract that includes financial incentives or consequences based on the results achieved by the contractor as measured by output, quality, or outcome measures. (Code 1981, § 49-4A-7, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1994, p. 304, § 1; Ga. L. 1995, p. 955, § 1; Ga. L. 1997, p. 1414, § 1; Ga. L. 1998, p. 128, § 49; Ga. L. 2013, p. 294, § 3-7/HB 242; Ga. L. 2014, p. 763, § 3-2/HB 898.)

The 2014 amendment, effective July 1, 2014, substituted “Chapter 4B of Title 49” for “Chapter 3 of Title 39” at the end of paragraph (a)(3).

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

49-4A-8. Commitment of delinquent children; procedure; cost; return of mentally ill or developmentally disabled children; escapees; discharge; evidence of commitment; records; restitution.

(a) When the court does not release a delinquent child unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit such child to the department as provided in Article 6 of Chapter 11 of Title 15; provided, however, that no delinquent child shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent children.

(b) When the court commits a delinquent child to the department, it may order such child conveyed forthwith to any facility designated by the department or direct that such child be left at liberty until otherwise ordered by the department under such conditions as will ensure his or her availability and submission to any orders of the department. If such delinquent child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the person assigned to convey a girl must be female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

(c) When a court commits a delinquent child to the department, the court shall at once electronically submit a certified copy of the order of commitment to the department, and the court, the juvenile probation officer, the community supervision officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession pertaining to the case, including, but not limited to, any predisposition investigation report as set forth in Code Section 15-11-590 and any risk assessment. Such reports shall, if the department so requests, be made upon forms furnished by the department or according to an outline provided by the department.

(d)(1) When a delinquent child has been committed to the department, the department shall, under rules and regulations established

by the board, forthwith examine and study such child and investigate all pertinent circumstances of his or her life and behavior. The department shall make periodic reexaminations of all such children within its control, except those on release under supervision of the department. Such reexaminations may be made as frequently as the department considers desirable, and every such child shall be reexamined at intervals not exceeding one year. Failure of the department to examine such a child committed to it or to reexamine him or her within one year of a previous examination shall not of itself entitle such child to discharge from control of the department but shall entitle such child to petition the committing court for an order of discharge; and the court shall discharge him or her unless the department, upon due notice, satisfies the court of the necessity of further control.

(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent child subject to its control. Records maintained by the department pertaining to a delinquent child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law regarding disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Except as provided by subsection (e.1) of this Code section and subsection (c) or (d) of Code Section 15-11-602, when a delinquent child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for such child's care and treatment has been completed, the department may:

(1) Permit such child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

(2) Order such child's confinement under such conditions as the department may believe best designed to serve such child's welfare and as may be in the best interest of the public;

(3) Order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) Revoke or modify any order of the department affecting such child, except an order of final discharge, as often as conditions indicate to be desirable; or

(5) Discharge such child from control of the department pursuant to Code Section 15-11-32 and subsection (c) of Code Section 15-11-607

when it is satisfied that such discharge will best serve such child's welfare and the protection of the public.

(e.1)(1) When a child who has been adjudicated for the commission of a class A designated felony act or class B designated felony act as defined in Code Section 15-11-2 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of such child's acts that such child is being released from confinement or custody.

(2) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by paragraph (1) of this subsection.

(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent act or class A designated felony act or class B designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

(4) The department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide notice required by paragraph (3) of this subsection.

(f) As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the department may:

(1) Require participation by such child in moral, academic, vocational, physical, and correctional training and activities, and provide such child the opportunity for religious activities where practicable in the institutions under the control and supervision of the department;

(2) Require such modes of life and conduct as may seem best adapted to fit and equip him or her for return to full liberty without danger to the public;

(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

(4) Place him or her, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

(g) When funds are available, the department may:

(1) Establish and operate places for detention and diagnosis of all delinquent children committed to it;

(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

(3) Establish aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

(h) Whenever the department finds that any child committed to the department is mentally ill or has a developmental disability, as defined in Code Section 15-11-2, the department shall have the power to return such child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the juvenile detention facility is located to take such action as the condition of the child may require.

(i)(1) A child who has been committed to the department for detention in a juvenile detention facility or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, or any other officer of this state authorized to serve criminal process upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, such written request shall be reviewed by the commissioner or his or her designee. If the commissioner or his or her designee finds that probable cause exists to believe that such child has violated his or her conditions of supervision, he or she may issue an order directing that such child be picked up and returned to custody.

(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children or children in need of services in its institutions, facilities, or programs, the supervision of delinquent children or children in need of services under intensive supervision in the community, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a

person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children or children in need of services retained by the person or organization if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend children who have escaped from a juvenile detention facility or who have broken the conditions of supervision; provided, however, that the employees so designated shall only be those with primary responsibility for the security functions of such facilities or whose primary duty consists of the apprehension of youths who have escaped from such facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126 and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent children or children in need of services detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and shall be certified under that chapter.

(3) For the purposes of investigation of children who have escaped from juvenile detention facilities of the department or of children who are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon

personal knowledge or written request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-501. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take such child into custody.

(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

(j) The department shall ensure that each child it releases under supervision or otherwise has suitable clothing, transportation to his or her home or to the county in which a suitable home or employment has been found for him or her, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to such child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

(k) Every child committed to the department, if not already discharged, shall be discharged from custody of the department when he or she reaches his or her twenty-first birthday.

(l) Commitment of a child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or being in need of services involving the same child and except in imposing sentence in any criminal proceeding against the same person.

(n)(1) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to

evaluate the relative merits of methods of treatment. The department shall cooperate and coordinate with courts, juvenile court clerks, the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, and public and private agencies in the collection of statistics and information regarding:

- (A) Juvenile delinquency;
- (B) Arrests made;
- (C) Detentions made, the offense for which such detention was authorized, and the reason for each detention;
- (D) Complaints filed;
- (E) Informations filed;
- (F) Petitions filed;
- (G) The results of complaints, informations, and petitions, including whether such filings were dismissed, diverted, or adjudicated;
- (H) Commitments to the department, the length of such commitment, and releases from the department;
- (I) The department's placement decisions for commitments;
- (J) Placement decisions to institutions, camps, or other facilities for delinquent children operated under the direction of courts or other local public authorities;
- (K) Community programs utilized and completion data for such programs;
- (L) Recidivism;
- (M) Data collected by juvenile court clerks pursuant to Code Section 15-11-64; and
- (N) Other information useful in determining the amount and causes of juvenile delinquency in this state.

(2) In order to facilitate the collection of the information required by paragraph (1) of this subsection, the department shall be authorized to inspect and copy all records of the court and law enforcement agencies pertaining to juveniles and collect data from juvenile court clerks.

(o) When a child committed to the department is under court order to make certain restitution as a part of his or her treatment by the court, the requirement that the restitution be paid in full shall not cease with the order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment,

and the department is empowered to enforce such restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge. (Code 1981, § 49-4A-8, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1993, p. 313, § 1; Ga. L. 1995, p. 619, § 8; Ga. L. 1996, p. 1016, §§ 1, 2; Ga. L. 1997, p. 582, § 3; Ga. L. 2000, p. 20, § 26; Ga. L. 2006, p. 293, § 4/HB 1145; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 963, § 2-20/SB 308; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2013, p. 294, § 3-8/HB 242; Ga. L. 2014, p. 382, § 4/SB 324; Ga. L. 2015, p. 422, § 5-101/HB 310; Ga. L. 2015, p. 890, § 7/HB 263.)

The 2014 amendment, effective July 1, 2014, inserted “the supervision of delinquent children or children in need of services under intensive supervision in the community,” near the end of the first sentence of paragraph (i)(2).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, substituted “the juvenile probation officer, the community supervision officer, the prosecuting and police authorities” for “the probation officer, the prosecuting and police authorities” in subsection (c). See

Editor’s notes for applicability. The second 2015 amendment, effective July 1, 2015, inserted “, the Criminal Justice Coordinating Council,” near the end of the introductory language of paragraph (n)(1).

Editor’s notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 231 (2015).

49-4A-9. Sentence of youthful offenders; modification of order; review; participation in programs.

JUDICIAL DECISIONS

Probation for remainder of sentence permitted. — In light of the express authority provided to review the defendant juvenile’s sentence before the defendant turned 17, the superior court was authorized to place the defendant on probation for the remainder of the defendant’s sentence based on the court’s finding of the defendant’s rehabilitation, which finding was supported by the record. *State v. T. M. H.*, 339 Ga. App. 628, 794 S.E.2d 201 (2016).

Custody of juvenile until 21 years. — Ordering that the juvenile remain in the Department of Juvenile Justice custody until the juvenile reaches 21 years of age is neither authorized by O.C.G.A. § 49-4A-9(e) or any other provision of Georgia law. *Ga. Dep’t of Juvenile Justice v. Eller*, 338 Ga. App. 247, 789 S.E.2d 412 (2016).

While O.C.G.A. § 49-4A-9(b) provides the superior court broad discretion to modify the court’s orders for the welfare of any child subject to the court’s jurisdiction, the plain language of subsection (e) of O.C.G.A. § 49-4A-9 limits that discretion once that child becomes 17 years of age. *Ga. Dep’t of Juvenile Justice v. Eller*, 338 Ga. App. 247, 789 S.E.2d 412 (2016).

Judgment of the trial court directing the Department of Juvenile Justice (DJJ) to hold in the Department’s custody a criminal defendant prosecuted as an adult for a crime committed as a juvenile, until the defendant turned 21 years old, was reversed because ordering that the defendant remain in DJJ custody until reaching 21 years of age was neither authorized by O.C.G.A. § 49-4A-9(e) or any other provision of Georgia law. *Ga. Dep’t of*

Juvenile Justice v. Eller, 338 Ga. App. 247, 789 S.E.2d 412 (2016).

Discretion is limited by mandatory minimum sentencing. — Discretion given to sentencing courts for reviewing the sentences of juveniles turning 17 in O.C.G.A. § 49-4A-9(e) was limited by the mandatory minimum sentence require-

ments of O.C.G.A. § 17-10-6.1; therefore, in reviewing a juvenile's prison sentence for armed robbery, the superior court erred by reducing the juvenile's original five-year prison sentence to which the state had agreed. *State v. Hudson*, No. S17G0739, 2018 Ga. LEXIS 177 (Mar. 15, 2018).

49-4A-11. Aiding or encouraging child to escape; hindering apprehension of child.

(a) Any person who shall knowingly aid, assist, or encourage any child who has been committed to the department to escape or to attempt to escape its control or custody shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(b) Any person who shall knowingly harbor or shelter any child who has escaped the lawful custody or control of the department shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c) Any person who shall knowingly hinder the apprehension of any child under the supervision of the Department of Community Supervision or the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 49-4A-11, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1996, p. 988, § 3; Ga. L. 2012, p. 1339, § 1A/SB 366; Ga. L. 2013, p. 294, § 3-11/HB 242; Ga. L. 2015, p. 422, § 5-102/HB 310.)

The 2015 amendment, effective July 1, 2015, inserted “supervision of the Department of Community Supervision or the” in subsection (c). See Editor’s notes for applicability.

Editor’s notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General

Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 231 (2015).

49-4A-12. Special school district.

(a) The Department of Juvenile Justice shall be a special school district which shall be given the same funding consideration for federal funds that school districts within this state are given.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, the schools within the department shall be under the control of

the commissioner who shall serve as the superintendent of schools for such district. The Board of Juvenile Justice shall serve as the board of education for such district.

(2) Any school within the department that is operated by a state charter school pursuant to a contract entered into in accordance with Code Section 20-2-2084.1 shall be under the control of the State Charter Schools Commission and the governing board of the state charter school, subject to any conditions in the contract. Any such school shall not be considered a part of the special school district established pursuant to this Code section.

(c)(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the State Board of Education. It is the intent of this Code section to fund educational services and programs in this special school district so that youth served therein shall receive the same quality and content of educational services as provided to youth in school districts within this state.

(2) The State School Superintendent may grant waivers for such provisions of the laws and regulations with which the schools cannot comply because of their functioning on an annual basis and in response to the commissioner or the commissioner's designee's written request and justification. Such exceptions shall be in writing.

(d)(1) Each teacher in the special school district shall receive annual compensation at the rate specified for the type of certificate held by such teacher based on the appropriate teacher salary schedules established pursuant to Code Section 20-2-212.

(2) This provision shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection.

(e) The commissioner shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f)(1) Nothing in the language of this Code section shall be construed as prohibiting any local school district from issuing a diploma to a youth in the custody of the department, upon certification of the principal of a departmental school.

(2) School records of any juvenile in the department's programs who is issued a diploma by a local school district shall be maintained by such local school district, provided that all references to the juvenile's commitment to and treatment by the department are expunged.

(g) The special school district under the department shall have the powers, privileges, and authority exercised or capable of exercise by any other school district.

(h) The effect of this Code section shall not be to provide state funds to the special school district under the department through Part 4 of Article 6 of Chapter 2 of Title 20, except as otherwise provided in Code Section 20-2-2084.1. (Code 1981, § 49-4A-12, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, §§ 1, 3; Ga. L. 2016, p. 443, § 2-6/SB 367.)

The 2016 amendment, effective July 1, 2016, near the end of subsection (a), substituted “within this state” for “within the state”; designated the existing provisions of subsection (b) as paragraph (b)(1), and, in paragraph (b)(1), substituted “Except as otherwise provided in paragraph (2) of this subsection, the” for “The” at the beginning of the first sentence; added

paragraph (b)(2); substituted “within this state” for “within the state” near the end of the second sentence of paragraph (c)(1); and added “, except as otherwise provided in Code Section 20-2-2084.1” at the end of subsection (h).
Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 139 (2016).

CHAPTER 4B

INTERSTATE COMPACT FOR JUVENILES

Sec.	tation of compact; promulga-
49-4B-1. Short title.	tion of rules and regulations by
49-4B-2. Compact.	board.
49-4B-3. (For effective date, see note.)	
Role of Governor in implemen-	

Effective date. — This chapter became effective July 1, 2014.

Cross references. — Juvenile Code, T. 15, C. 11.

49-4B-1. Short title.

This chapter shall be known and may be cited as the “Interstate Compact for Juveniles.” (Code 1981, § 49-4B-1, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

49-4B-2. Compact.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of Georgia with any of the United States legally joining therein in the form substantially as follows:

ARTICLE I.

PURPOSE.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(A) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(C) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(D) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(E) Provide for the effective tracking and supervision of juveniles;

(F) Equitably allocate the costs, benefits and obligations of the compacting states;

(G) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(H) Insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(I) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(J) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(K) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(L) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(M) Coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II.

DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(A) “By-laws” means those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(B) “Compact Administrator” means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(C) “Compacting State” means any state which has enacted the enabling legislation for this compact.

(D) “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(E) “Court” means any court having jurisdiction over delinquent, neglected, or dependent children.

(F) “Deputy Compact Administrator” means the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

(G) “Interstate Commission” means the Interstate Commission for Juveniles created by Article III of this compact.

(H) “Juvenile” means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(I) “Non-Compacting state” means any state which has not enacted the enabling legislation for this compact.

(J) “Probation or Parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(K) “Rule” means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(L) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the

U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III.

INTERSTATE COMMISSION FOR JUVENILES.

(A) The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(B) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(C) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

(D) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

(E) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(F) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

(G) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(H) The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(I) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

- (2) Disclose matters specifically exempted from disclosure by statute;

- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

- (4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(J) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(K) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of

statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

(5) To establish and maintain offices which shall be located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(14) To sue and be sued.

(15) To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting and exchanging of data.

(20) The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

ARTICLE V.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. By-laws

(1) The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the Interstate Commission;

(b) Establishing an executive committee and such other committees as may be necessary;

(c) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(e) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

(g) Providing “start-up” rules for initial administration of the compact; and

(h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

(1) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

(1) The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission

and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI.

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(A) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(B) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(C) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) Publish the proposed rule's entire text stating the reasons for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(D) Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(E) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(F) The existing rules governing the operation of The Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(G) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII.

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this

compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII.

FINANCE.

(A) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(B) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon

a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(C) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX.

THE STATE COUNCIL.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X.

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(A) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(B) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or

upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(C) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI.

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or

duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the Interstate Commission;

(b) Alternative Dispute Resolution;

(c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII.

SEVERABILITY AND CONSTRUCTION.

(A) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(B) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII.

BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws

(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

(1) All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. (Code 1981, § 49-4B-2, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

49-4B-3. (For effective date, see note.) Role of Governor in implementation of compact; promulgation of rules and regulations by board.

With respect to the Interstate Compact for Juveniles set out in Code Section 49-4B-2:

(1) The Governor shall by executive order establish the initial composition, terms, and compensation of the Georgia State Council for Interstate Juvenile Supervision required by Article IX of that compact, with the Governor making the appointments to those positions; except that any appointment to a position representing the legislative branch shall be made jointly by the Speaker of the House of Representatives and the President of the Senate and any appointment to a position representing the judicial branch shall be made by the Chief Justice of the Supreme Court;

(2) The Governor shall by executive order establish the qualifications, term, and compensation of the compact administrator required by Article III of that compact, with the state council making the appointment of the compact administrator;

(3) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective; and

(4) Except as otherwise provided for in this Code section, the board may promulgate rules or regulations necessary to implement and administer the compact, subject to the provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 49-4B-3, enacted by Ga. L. 2014, p. 763, § 2-1/HB 898.)

- Sec. director of new facility; preliminary records check for employees; retention of fingerprints.
- 49-5-63. Notice of determination; issuance of license; effect of unsatisfactory determination.
- 49-5-64. Fingerprint records check; retention.
- 49-5-68. Change of director.
- 49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; violations; foster parents known to have criminal records; retention of fingerprints.

Article 5

Records Checks for Persons Supervising Children

- 49-5-111. Employers authorized to make records checks; procedure; retention of fingerprints.
- 49-5-115. Letter issued by Department of Early Care and Learning in lieu of background screening or fingerprint checks.

Article 6

Programs and Protection for Children

PART 2

DELINQUENCY PREVENTION AND COMMUNITY BASED SERVICES

- 49-5-155. Effect of article on Department

- Sec. of Juvenile Justice; office as recipient entity for federal grants.

Article 8

Central Child Abuse Registry

- 49-5-180. Definitions.
- 49-5-181. Establishment of central registry; function of registry.
- 49-5-182. Notice to division of substantiated case resulting from investigation by abuse investigator.
- 49-5-183. Division to update registry upon notification of substantiated case; notice to alleged abuser; representation of alleged minor child abuser; hearing on expungement of name from registry.
- 49-5-184. Expungement hearing.
- 49-5-185. Access to information in registry; statistical analysis of substantiated cases and convictions entered into child abuse registry; requests to determine if one's name is included in registry.
- 49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.
- 49-5-187. Immunity from civil or criminal liability.

ARTICLE 1

CHILDREN AND YOUTH SERVICES

Cross references. — Extended care youth services, § 15-11-340 et seq.

49-5-3. Definitions.

As used in this article, the term:

(1) "Age or developmentally appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group. In the case of a specific child, such

term also includes activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

(2) “Caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

(3) “Child-caring institution” means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the board.

(4) “Child-placing agency” means any institution, society, agency, or facility, whether incorporated or not, which places children in foster homes for temporary care or for adoption.

(5) “Child welfare and youth services” means duties and functions authorized or required by this article to be provided by the department with respect to:

(A) Establishment and enforcement of standards for social services and facilities for children and youths which supplement or substitute for parental care and supervision for the purpose of preventing or remedying or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children and youths;

(B) Protecting and caring for dependent children and youths;

(C) Protecting and promoting the welfare of children of working mothers;

(D) Providing social services to children and youths and their parents and care for children and youths born out of wedlock and their mothers;

(E) Promotion of coordination and cooperation among organizations, agencies, and citizen groups in community planning, organization, development, and implementation of such services; and

(F) Otherwise protecting and promoting the welfare of children and youths, including the strengthening of their homes where possible or, where needed, the provision of adequate care of children and youths away from their homes in foster family homes or day-care or other child care facilities.

(6) “Children’s transition care center” means a transition center which provides a temporary, home-like environment for medically

fragile children, technology dependent children, and children with special health care needs, up to 21 years of age, who are deemed clinically stable by a physician but dependent on life-sustaining medications, treatments, and equipment and who require assistance with activities of daily living to facilitate transitions from a hospital or other facility to a home or other appropriate setting. Such centers are designated sites that provide child placing services and nursing care, clinical support services, and therapies for short-term stays of one to 14 days and for longer stays of up to 90 days to facilitate transitions of children to homes or other appropriate settings. Extended stays of up to 12 months may be approved by the department by waiver.

(7) “Dependent child or youth” means any person so adjudged under Chapter 11 of Title 15.

(8) “Group-care facility” means a place providing care for groups of children and youths, other than a foster family home.

(9) “Homemaker service” means a service provided by a woman selected for her skills in the care of children and home management and placed in a home to help maintain and preserve the family life during the absence or incapacity of the mother.

(10) “In loco parentis” means a quasi-parental relationship inferred from and implied by the fact that a child or youth has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.

(11) “Legal custody” means a legal status created by court order embodying the following rights and responsibilities:

- (A) The right to have the physical possession of the child;
- (B) The right and the duty to protect, train, and discipline the child;
- (C) The responsibility to provide the child with food, clothing, shelter, education, and ordinary medical care; and
- (D) The right to determine where and with whom the child shall live,

provided that these rights and responsibilities shall be exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. These rights shall be subject to judicial oversight and review pursuant to Code Section 15-11-212.

(12) “Maintenance” means all general expenses for care such as board; shelter; clothing; medical, dental, and hospital care; transportation; and other necessary or incidental expenses.

(13) “Maternity home” means any place in which any person, society, agency, corporation, or facility receives, treats, or cares for, within any six-month period, more than one pregnant woman whose child is to be born out of wedlock, either before, during, or within two weeks after childbirth. This definition shall not include women who receive maternity care in the home of a relative or in general or special hospitals, licensed according to law, in which maternity treatment and care is part of the medical services performed and the care of children is only brief and incidental.

(14) “Probation” means a legal status created by court order following adjudication in a delinquency case, whereby a child or youth is permitted to remain in the community, subject to supervision by the court or an agency designated by the court and subject to being returned to court at any time during the period of probation.

(15) “Protective supervision” means a legal status created by court order following adjudication in a dependency case, whereby a child’s place of abode is not changed but assistance directed at correcting the dependency is provided through the court or an agency designated by the court.

(16) “Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the department to participate in extracurricular, enrichment, cultural, and social activities.

(17) “Shelter” or “shelter care” means temporary care in a nonsecurity or open type of facility. (Ga. L. 1963, p. 81, § 3; Ga. L. 1982, p. 706, §§ 2, 6-8; Ga. L. 1988, p. 1720, § 16; Ga. L. 1991, p. 408, § 1; Ga. L. 1992, p. 1983, § 25; Ga. L. 1994, p. 97, § 49; Ga. L. 2004, p. 645, § 7; Ga. L. 2007, p. 590, § 3/HB 153; Ga. L. 2008, p. 1145, § 1/HB 984; Ga. L. 2013, p. 294, § 4-54/HB 242; Ga. L. 2015, p. 552, § 5/SB 138.)

The 2015 amendment, effective July 1, 2015, added paragraphs (1) and (2); redesignated former paragraphs (1) through (5) as present paragraphs (3) through (7), respectively; deleted former paragraphs (6), (7), and (8), each of which read “Reserved.”; redesignated former

paragraph (9) as present paragraph (8); deleted former paragraph (9.1), which read “Reserved.”; redesignated former paragraphs (10) through (16) as present paragraphs (9) through (15), respectively; and added paragraph (16).

49-5-4.1. Child welfare agency public scorecard established.

(a) As used in this Code section, the term:

(1) “Affected agency” means any state agency, department, division, or office which requires a license or commission from the department for child welfare agencies, including, but not limited to, the Division of Family and Children Services, Department of Human Services, Department of Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or Department of Community Health.

(2) “Child welfare agency” means any child-caring institution, child-placing agency, children’s transition care center, or maternity home.

(3) “Services” means direct care, treatment, custodial responsibilities, or any combination thereof provided for children.

(b) The Department of Human Services, in conjunction with other affected agencies and representatives of child welfare agencies, shall establish a child welfare agency public scorecard to score child welfare agencies. Affected agencies shall cooperate with the department to develop and establish the child welfare agency public scorecard.

(c) The public scorecard for child welfare agencies and any explanation for the basis of any score on the scorecard shall be published in a single location on a website for public review. Such website shall provide scores for each child welfare agency by the affected agency that is responsible for the regulation of or contracting with each particular child welfare agency. The score shall be posted within 30 days of the completion of an inspection, or if appealed pursuant to subsection (e) of this Code section, the revised score, if any, shall be posted within 30 days of the conclusion of the appeal.

(d) The scores shall be based on an established published formula with weight appropriately given for each agency’s compliance or non-compliance with applicable laws; rules; contracts; court orders; measures of treatment; behavioral, vocational, and educational outcomes for persons receiving services; and other pertinent information, based on empirical evidence to the greatest extent possible.

(e) The department shall provide child welfare agencies with advanced written notice of the scores to be posted. A child welfare agency may contest a score in accordance with department rules by filing a written appeal with the department within ten days from receipt of such notice. If a child welfare agency contests such score, the department shall note on the website that the score is under appeal, until such appeal is concluded. Within ten days of receipt of a child welfare agency’s written contest of a score, the department shall hold a meeting with the child welfare agency and any affected agency whose score is contested. The meeting shall be for the parties to discuss the score and basis for the score. Within 30 days after the meeting, the commission-

er’s designee shall issue written notice confirming or revising the score. After issuance of such written notice, the child welfare agency may contest the score as a contested case under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at such hearing.

(f) In consultation with other affected agencies, the department shall promulgate rules and regulations consistent with this Code section, including establishing criteria which must be met in order for a child welfare agency to contest or appeal a score.

(g) Nothing in this Code section shall be construed to affect the ability of any affected agency, in its sole discretion, to contract with any child welfare agency or to exercise the rights of the affected agency under the terms and conditions of any existing contract with a child welfare agency. (Code 1981, § 49-5-4.1, enacted by Ga. L. 2016, p. 773, § 5/HB 905; Ga. L. 2017, p. 774, § 49/HB 323.)

Effective date. — This Code section 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).
The 2017 amendment, effective May

49-5-8. Powers and duties of department.

(a) The Department of Human Services is authorized and empowered, through its own programs and the programs of county or district departments of family and children services, to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated therefor, programs that will provide:

(1) Preventive services as follows:

(A) Collecting and disseminating information about the problems of children and youths and providing consultative assistance to groups, public and private, interested in developing programs and services for the prevention, control, and treatment of dependency and delinquency among the children of this state; and

(B) Research and demonstration projects designed to add to the store of information about the social and emotional problems of children and youths and improve the methods for dealing with these problems;

(2) Child welfare services as follows:

(A) Casework services for children and youths and for mothers bearing children out of wedlock, whether living in their own homes

or elsewhere, to help overcome problems that result in dependency or delinquency;

(B) Protective services that will investigate complaints of abuse or abandonment of children and youths by parents, guardians, custodians, or persons serving in loco parentis and, on the basis of the findings of such investigation, offer social services to such parents, guardians, custodians, or persons serving in loco parentis in relation to the problem or bring the situation to the attention of a law enforcement agency, an appropriate court, or another community agency;

(C) Supervising and providing required services and care involved in the interstate placement of children;

(D) Homemaker service, or payment of the cost of such service, when needed due to the absence or incapacity of the mother;

(E) Boarding care, or payment of maintenance costs, in foster family homes or in group-care facilities for children and youths who cannot be adequately cared for in their own homes;

(F) Boarding care or payment of maintenance costs for mothers bearing children out of wedlock prior to, during, and for a reasonable period after childbirth;

(G) Day-care services for the care and protection of children whose parents are absent from the home or unable for other reasons to provide parental supervision; and

(H) Casework services and care to all children and youths where the parent, custodian, or guardian has placed such children in the custody of the department by voluntary agreement, until such agreement is revoked by the parent, custodian, or guardian upon request that such children be returned to the parent, custodian, or guardian or to another relative or the voluntary agreement expires; provided, however, that nothing in this subparagraph shall prohibit the department from obtaining an order placing such children in its custody in accordance with Article 3 of Chapter 11 of Title 15;

(3) Services to courts, upon their request, as follows:

(A) Accepting for casework services and care all children and youths whose legal custody is vested in the department by the court;

(B) Providing shelter or custodial care for children prior to examination and study or pending court hearing;

(C) Making social studies and reports to the court with respect to children and youths as to whom petitions have been filed; and

(D) Providing casework services and care or payment of maintenance costs for children and youths who have run away from their home communities within this state, or from their home communities in this state to another state, or from their home communities in another state to this state; paying the costs of returning such runaway children and youths to their home communities; and providing such services, care, or costs for runaway children and youths as may be required under Chapter 4B of this title;

(4) Regional group-care facilities for the purpose of:

(A) Providing local authorities an alternative to placing any child in a common jail;

(B) Shelter care prior to examination and study or pending a hearing before juvenile court;

(C) Detention prior to examination and study or pending a hearing before juvenile court; and

(D) Study and diagnosis pending determination of treatment or a hearing before juvenile court;

(5) Facilities designed to afford specialized and diversified programs, such as forestry camps, ranches, and group residences, for the care, treatment, and training of children and youths of different ages and different emotional, mental, and physical conditions;

(6) Regulation of child-placing agencies, child-caring institutions, and maternity homes by:

(A) Establishing rules and regulations for and providing consultation on such rules and regulations for all such agencies, institutions, and homes; and

(B) Licensing and inspecting periodically all such agencies, institutions, and homes to ensure their adherence to established standards as prescribed by the department;

(7) Adoption services, as follows:

(A) Supervising the work of all child-placing agencies when funds are made available;

(B) Providing services to parents desiring to surrender children for adoption as provided for in adoption statutes;

(C) Providing care or payment of maintenance costs for mothers bearing children out of wedlock and children being considered for adoption;

(D) Inquiring into the character and reputation of persons making application for the adoption of children;

(E) Placing children for adoption;

(F) Providing financial assistance to families adopting children once the child has been placed for adoption, determined eligible for assistance, and the adoption assistance agreement has been signed prior to the finalization of the adoption by all parties. Financial assistance may only be granted for hard-to-place children with physical, mental, or emotional disabilities or with other problems for whom it is difficult to find a permanent home. Financial assistance may not exceed 100 percent of the amount that would have been paid for boarding such child in a family foster home and for special services such as medical care not available through insurance or public facilities. Such supplements shall only be available to families who could not provide for the child adequately without continued financial assistance. The department may review the supplements paid at any time but shall review them at least annually to determine the need for continued assistance;

(G) Providing payment to a licensed child-placing agency which places a child with special needs who is under the jurisdiction of the department for adoption. Payment may not exceed \$5,000.00 for each such adoption arranged by an agency. The board shall define the special needs child. One-half of such payment shall be made at the time of placement and the remaining amount shall be paid when the adoption is finalized. If the adoption disrupts prior to finalization, the state shall be reimbursed by the child-placing agency in an amount calculated on a prorated basis based on length of time the child was in the home and the services provided; and

(H) Providing payment to an agency which recruits, educates, or trains potential adoptive or foster parents for preparation in anticipation of adopting or fostering a special needs child. The board shall define the special needs child and set the payment amount by rule and regulation. Upon appropriate documentation of these preplacement services in a timely manner, payments as set by the board shall be made upon enrollment of each potential adoptive or foster parent for such services;

(8) Staff development and recruitment programs through in-service training and educational scholarships for personnel as may be necessary to assure efficient and effective administration of the services and care for children and youths authorized in this article. The department is authorized to disburse state funds to match federal funds in order to provide qualified employees with graduate or postgraduate educational scholarships in accordance with rules and regulations adopted by the board pursuant to Article VIII, Section VII, Paragraph I of the Constitution of Georgia;

(9) Miscellaneous services, such as providing all medical, hospital, psychiatric, surgical, or dental services or payment of the costs of

such services as may be considered appropriate and necessary by competent medical authority to those children subject to the supervision and control of the department without securing prior consent of parents or legal guardians;

(10) Preparation, education, and training for foster parents which will provide them with the appropriate knowledge and skills to provide for the needs of foster children, including knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, and continue such preparation, as necessary, after the placement of the children;

(11) Each youth who is leaving foster care by reason of having attained 18 years of age, unless the child has been in foster care for less than six months, with, if the child is eligible to receive such document, an official or certified copy of the United States birth certificate of the child, a social security card issued by the Commissioner of Social Security, health insurance information, a copy of the child's medical records, and a driver's license or identification card issued by a state in accordance with the requirements of Section 202 of the REAL ID Act of 2005. Provision of records in accordance with this paragraph shall not be considered a violation of subsection (b) of Code Section 49-5-40; and

(12) Extended care youth services for youths between 18 and 21 years of age as set forth in Article 4A of Chapter 11 of Title 15 and to receive federal reimbursement for providing such services in accordance with 42 U.S.C. Section 675, as it existed on February 1, 2018.

(b) The department is authorized to perform such other duties as may be required under related statutes.

(c)(1) As used in paragraph (2) of this subsection, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any territory or possession of or territory or possession administered by the United States.

(2) The Department of Human Services is authorized to enter into interstate compacts, on behalf of this state, with other states to provide for the reciprocal provision of adoption assistance services.

(3) The purpose of paragraphs (1) and (2) of this subsection is to comply with the requirements of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Part E of Title IV of the Social Security Act and to assure that recipients of adoption assistance in Georgia who change their residences to other states receive adoption

assistance services, other than adoption assistance payments, from their new states of residence.

(d)(1) As used in this subsection, the term “sexually exploited child” shall have the same meaning as set forth in Code Section 15-21-201.

(2) The department, in consultation with the Office of the Child Advocate for the Protection of Children, the Criminal Justice Coordinating Council, and law enforcement officials, shall develop a plan for the delivery of services to sexually exploited children, victims of trafficking of persons for labor servitude, and such children and persons who are at risk of becoming victims of such offenses. In developing such plan, the department shall work with state and federal agencies, public and private entities, and other stakeholders as it deems appropriate and shall periodically review such plans to ensure appropriate services are being delivered. Such plan shall include:

(A) Identifying children who need services;

(B) Providing assistance with applications for federal and state benefits, compensation, and services;

(C) Coordinating the delivery of physical and mental health, housing, education, job training, child care, legal, and other services;

(D) Preparing and disseminating educational and training materials to increase awareness of available services;

(E) Developing and maintaining community based services;

(F) Providing assistance with family reunification or repatriation to a country of origin; and

(G) Providing law enforcement officials assistance in identifying children in need of such services. (Ga. L. 1963, p. 81, § 11; Ga. L. 1969, p. 939, § 1; Ga. L. 1971, p. 351, § 1; Ga. L. 1973, p. 946, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 518, § 1; Ga. L. 1988, p. 1945, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1992, p. 1983, § 28; Ga. L. 1993, p. 1969, § 3; Ga. L. 1994, p. 409, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 1697, § 1; Ga. L. 2004, p. 645, § 8; Ga. L. 2009, p. 100, § 1/HB 237; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-55/HB 242; Ga. L. 2014, p. 763, § 3-3/HB 898; Ga. L. 2015, p. 552, § 6/SB 138; Ga. L. 2015, p. 675, § 4-3/SB 8; Ga. L. 2016, p. 864, § 49/HB 737; Ga. L. 2018, p. 927, § 2-1/HB 906.)

The 2014 amendment, effective July 1, 2014, substituted “Chapter 4B of Title 49” for “Chapter 3 of Title 39” at the end of subparagraph (a)(3)(D).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in paragraph (a)(2), deleted “and” at the end of subparagraph (F), added “and” at the end of subparagraph (G), and added subparagraph (H); deleted “and” at the end of paragraph (a)(8), substituted a semicolon for the period at the end of subparagraph (a)(9), and added paragraphs (a)(10) and (a)(11). The second 2015 amendment, effective July 1, 2015, added subsection (d).

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted “Chapter 4B of this title” for “Chapter 4B of Title 49” at the end of subparagraph (a)(3)(D).

The 2018 amendment, effective July 1, 2018, deleted “and” at the end of paragraph (a)(10), substituted “; and” for the period at the end of paragraph (a)(11), and added paragraph (a)(12).

Editor’s notes. — Ga. L. 2015, p. 675, § 1-1/SB 8, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safe Harbor/Rachel’s Law Act.’”

Ga. L. 2015, p. 675, § 1-2/SB 8, not codified by the General Assembly, provides: “(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low self-esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons

performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

“(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state.”

Code Section 15-21-201, referenced in paragraph (d)(1), was enacted by Ga. L. 2015, p. 675, § 3-1/SB 8. Ga. L. 2015, p. 675, § 6-1(b)/SB 8, not codified by the General Assembly, provides that this article “shall become effective on January 1, 2017, provided that a constitutional amendment is passed by the General Assembly and is ratified by the voters in the November, 2016, General Election amending the Constitution of Georgia to authorize the General Assembly to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. If such an amendment to the Constitution of Georgia is not so ratified, then Part 3 of this Act shall not become effective and shall stand repealed by operation of law on January 1, 2017.” The constitutional

amendment was approved by the voters in November, 2016.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev.

1 (2014). For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 43 (2015).

49-5-12. Licensing and inspection of child welfare agencies; standards; revocation or refusal of license; penalties; violations.

(a) As used in this Code section, the term “child welfare agency” means any child-caring institution, child-placing agency, children’s transition care center, or maternity home.

(b) All child welfare agencies shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board. The board shall develop and publish in print or electronically rules and regulations for licensing or commissioning of child welfare agencies. Child welfare agencies electing to be commissioned rather than licensed shall operate in accordance with the same procedures, standards, rules, and regulations for licensing of child welfare agencies. A license issued to a child-placing agency shall be deemed approval of all foster family homes approved, supervised, and used by the licensed child-placing agency as a part of its work, subject to this article and rules and regulations of the board.

(c) The department shall assist applicants or licensees or persons holding commissions in meeting rules and regulations of the department for child welfare agencies and, if a licensee or person holding a commission is, for any reason, denied renewal of a license or commission or if a license or commission is revoked or if any applicant for a license or commission cannot meet department rules and regulations for child welfare agencies, the department shall assist in planning the placement of children, if any, in the custody of such child welfare agency in some other licensed or commissioned child welfare agency or assist in returning them to their own homes or in making any other plans or provisions as may be necessary and advisable to meet the particular needs of the children involved.

(d) Application for a license or commission shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license or commission and upon presentation by the applicant of evidence that the child welfare agency meets the rules and regulations prescribed by the department, the department shall issue such child welfare agency a license or commission for no more than one year.

(e) If the department finds that any child welfare agency applicant does not meet rules and regulations prescribed by the department but

is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child welfare agency, but such temporary license or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such agency is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(f) The department shall refuse a license or commission upon a showing of:

(1) Noncompliance with the rules and regulations for child welfare agencies as adopted by the Board of Human Services which are designated in writing to the facilities as being related to children's health and safety;

(2) Flagrant and continued operation of an unlicensed or uncommissioned facility in contravention of the law; or

(3) Prior license or commission denial or revocation within one year of application.

(g) All licensed or commissioned child welfare agencies shall prominently display the license or commission issued to such agency by the department at some point near the entrance of the premises of such agency that is open to view by the public.

(h) The department's action revoking or refusing to renew or issue a license or commission required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that only 30 days' notice in writing from the commissioner's designee shall be required prior to license or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(i) Child-caring institutions and child-placing agencies, when licensed in accordance with this Code section, may receive needy or dependent children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care. Parents, guardians, custodians, or persons serving in loco parentis to such children may sign releases or agreements giving to such institu-

tions or agencies custody and control over such children during the period of care. Children's transition care centers may receive medically fragile children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care to facilitate transitions from a hospital or other facility to a home or other appropriate setting.

(i.1) A children's transition care center shall serve no more than six children per residence or 16 children per campus at a time. Children's transition care center services shall be available to all families in this state, including those whose care is paid for through the Department of Community Health or the Department of Human Services or by insurance companies that cover home health care services or private duty nursing care in the home. Each children's transition care center location shall be physically separate and apart from any other facility licensed by the Department of Human Services under this chapter and shall provide one or more of the following services: respite care, registered nursing or licensed practical nursing care, transitional care for the facilitation of transitions to a home or other appropriate setting and reunion of families, medical day care, weekend camps, and diagnostic studies typically done in the home setting.

(j) Child-placing agencies, in placing children in foster family homes, shall safeguard the welfare of such children by thoroughly investigating each such home and the character and reputation of the persons residing therein and shall adequately supervise each home during the period of care. All children placed in foster family homes shall, as far as is practicable, be placed with persons of the same religious faith as the children themselves or the children's parents.

(k) It shall be the duty of the department to inspect at regular intervals all licensed or commissioned child welfare agencies within the state, including foster family homes used by such child-placing agencies. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee or commissionee.

(l) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any child welfare agency or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(m) If abuses, derelictions, or deficiencies are found in the operation and management of any child welfare agency, they shall be brought immediately to the attention of the management of such agency; and if correctable, but not corrected within a reasonable time, the department shall revoke the license or commission of such agency in the manner prescribed in this Code section.

(n) The department may require periodic reports from child welfare agencies in such forms and at such times as the department may prescribe.

(o) Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government shall not be subject to licensure under this Code section, but the department may, through its authorized agents, make periodic inspections of such agencies, facilities, and institutions. Reports of such inspections shall be made privately to the proper authorities in charge of such agencies, facilities, or institutions. The department shall cooperate with such authorities in the development of standards that will adequately protect the health and well-being of all children and youths detained in such agencies, facilities, and institutions or provided care by them. The department may recommend changes in programs and policies and if, within a reasonable time, the standards established by the department and the recommendations of the department are not met, it shall be the duty of the commissioner to make public in the community in which such agency, facility, or institution is located the report of the above-mentioned inspection and the changes recommended by the department. If any serious abuses, derelictions, or deficiencies are found and are not corrected within a reasonable time, the commissioner shall report them in writing to the Governor.

(p) Any child welfare agency that shall operate without a license or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 for each such offense. Each day of operation without a license or commission shall constitute a separate offense.

(q) No person, official, agency, hospital, maternity home, or institution, public or private, in this state shall receive or accept a child under 17 years of age for placement or adoption or place such a child, either temporarily or permanently, in a home other than the home of the child's relatives without having been licensed or commissioned by the department. Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection shall be punishable by a fine of not less than \$500.00 nor exceeding \$1,000.00 for each offense. Nothing in this Code section shall be construed to prohibit a properly licensed attorney at law from providing necessary legal services and counsel to parties engaged in or contemplating adoption proceedings. Nothing in this Code section shall be construed to prohibit an individual seeking to:

(1) Adopt a child or children from receiving or accepting a child or children in the individual's home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or

(2) Have that individual's child or children placed for adoption from placing that individual's child or children in the home of an individual who is not related to the child or children in anticipation of the individual's initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19.

(r) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of a child welfare agency without a license or commission or the continued operation of a child welfare agency in willful violation of this article or of any regulation of the department or in violation of any order of the board.

(s) The term "licensed child welfare agency" shall include a commissioned child welfare agency and any references in this Code to a licensed child welfare agency, including criminal, administrative, and civil provisions applicable to licensed child welfare agencies, shall include and apply to commissioned child welfare agencies unless otherwise provided in this article. (Ga. L. 1963, p. 81, §§ 3, 14; Ga. L. 1967, p. 772, § 1; Ga. L. 1973, p. 560, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 706, §§ 1, 3, 9, 10; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1986, p. 1038, § 1; Ga. L. 1987, p. 1435, §§ 3, 4; Ga. L. 1988, p. 217, § 1; Ga. L. 1989, p. 1795, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1991, p. 408, §§ 2-4; Ga. L. 1991, p. 1640, § 13; Ga. L. 1992, p. 6, § 49; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 650, § 4; Ga. L. 2004, p. 645, § 9; Ga. L. 2004, p. 1085, § 1; Ga. L. 2008, p. 1145, § 2/HB 984; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228; Ga. L. 2009, p. 800, § 6/HB 388; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 135, § 11/HB 354; Ga. L. 2016, p. 773, § 6/HB 905; Ga. L. 2017, p. 774, § 49/HB 323.)

The 2016 amendment, effective July 1, 2016, substituted "\$500.00 nor more than \$1,000.00" for "\$50.00 nor more than \$200.00" in the first sentence of subsection (p); and substituted "\$500.00 nor exceeding \$1,000.00" for "\$100.00 nor exceeding \$500.00" in the second sentence of subsection (q).

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, deleted ", as defined in subsection (a) of this Code section," following "agencies" near the beginning of the first sentence of subsection (b).

49-5-12.2. Immunity from liability.

Any caregiver or other entity under contract with the department shall be immune from civil liability as a result of a caregiver's approval of the participation of a child, who is in the custody of the department, in an age or developmentally appropriate activity, so long as such caregiver or other entity under contract with the department acts in accordance with the reasonable and prudent parent standard. No provision in any agreement between the department and a caregiver or an entity under contract with the department shall diminish the

standard of care provided in this Code section. (Code 1981, § 49-5-12.2, enacted by Ga. L. 2015, p. 552, § 7/SB 138.)

Effective date. — This Code section became effective July 1, 2015.

49-5-12.3. Definitions; annual inspection of child welfare agency.

(a) As used in this Code section, the term:

(1) “Affected agency” means any state agency, department, division, or office which requires a license or commission from the department for child welfare agencies, including, but not limited to, the Division of Family and Children Services, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Community Health.

(2) “Annual inspection” means an inspection of a child welfare agency’s facility, books, minutes, financial statements, files, employees, programs, and contracts to ensure contract compliance and licensure compliance.

(3) “Child welfare agency” means any child-caring institution, child-placing agency, children’s transition care center, or maternity home.

(4) “Contract compliance” means adherence to the terms of a contract a child welfare agency has with an affected agency to provide child welfare services.

(5) “Licensure compliance” means adherence to licensing or commissioning requirements established pursuant to and in accordance with Code Section 49-5-12.

(b) The department shall ensure that the annual inspection of each child welfare agency is performed by all affected agencies in a singular coordinated manner. Affected agencies shall not duplicate the annual inspection but shall cooperate and assist the department with the annual inspection. Affected agencies shall share the results of the annual inspection with other applicable affected agencies.

(c) The annual inspection shall not occur sooner than 330 days or later than 390 days after the date on which the last annual inspection began and shall not exceed five days. Affected agencies may reduce the extent of the annual inspection by reducing the frequency or the extent of the inspection for contract compliance when the child welfare agency has shown an exceptional history of contract compliance as determined upon past scores; provided, however, that such reduction does not violate federal law, court order, or settlement agreement.

(d) A child welfare agency may contest the results of an annual inspection, in accordance with department rules, by filing a written appeal with the affected agency within ten days of receipt of the affected agency's annual inspection report. Within ten days of receipt of a child welfare agency's written appeal of the annual inspection, the affected agency shall hold a meeting with the child welfare agency. The meeting shall be for the parties to discuss the annual inspection.

(e) The annual inspection shall not limit the ability of affected agencies and other state departments, divisions, and agencies to ensure the safety and well-being of children in the care of child welfare agencies or to inspect, investigate, or respond as required by court order, settlement agreement, or federal law.

(f) In consultation with other affected agencies, the department shall promulgate rules and regulations consistent with this Code section, including establishing criteria which must be met in order for a child welfare agency to contest or appeal an evaluation.

(g) Nothing in this Code section shall be construed to affect the ability of any affected agency, in its sole discretion, to contract with any child welfare agency or to exercise the rights of the affected agency under the terms and conditions of any existing contract with a child welfare agency. (Code 1981, § 49-5-12.3, enacted by Ga. L. 2016, p. 773, § 7/HB 905; Ga. L. 2017, p. 774, § 49/HB 323.)

Effective date. — This Code section became effective July 1, 2016.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modern-

ize, and correct the Code, substituted "results of the annual inspection" for "results of annual inspection" near the end of the last sentence of subsection (b).

49-5-19. Annual report on children and youth services.

The commissioner shall prepare and publish in print or electronically an annual report on the operations of the department and of county departments of family and children services under this article and submit it to the Governor, the board, and all interested persons, officials, agencies, and groups, public or private. The report shall contain, in addition to information, statistics, and data required by other provisions of this article, a comprehensive analysis of performance of child welfare and youth services throughout the state; an analysis of goals to ensure that no more than 25 percent of children remain in the foster care system under Title IV-E of the Social Security Act for a period of 24 months or longer, as provided by Public Law 96-272; and such other information and recommendations of the commissioner as may be suitable. (Ga. L. 1963, p. 81, § 20; Ga. L. 1982, p. 1120, §§ 1, 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2015, p. 552, § 8/SB 138.)

The 2015 amendment, effective July 1, 2015, substituted “ensure that no more than 25 percent of children remain in the foster care system under Title IV-E of the Social Security Act” for “reduce by 1 per-

cent each year, beginning with the fiscal year that starts October 1, 1983, the number of children who have been in family or institutional foster care” in this Code section.

49-5-24. Interagency efforts to gather and share comprehensive data; legislative findings; state-wide system for sharing data regarding care and protection of children; inter-agency data protocol; interagency agreements; waivers from certain federal regulations.

(a)(1) In an effort to improve the availability and quality of programs and services for the protection of children and youth, the General Assembly supports interagency efforts to gather comprehensive data and to actively share and disseminate data among those agencies responsible for making informed decisions regarding the treatment, care, security, and protection of children within this state.

(2) The General Assembly finds that the sharing and integration of appropriate data and information may have numerous benefits for children and families in this state, as well as for the state and local agencies attempting to provide services for them.

(3) The General Assembly finds that such data sharing and integration can serve the best interests of the child and the family, contribute to higher levels of effectiveness in service delivery, provide greater efficiency and productivity, and assist in the protection of children. Specifically, such data sharing and integration can reduce redundant data entry, expedite data sharing between agencies, provide for more timely service delivery, ensure more accurate and up-to-date information, assist in the development of a seamless system of services, and contribute to better performance and greater accountability by all involved parties.

(4) The General Assembly finds that the goals and purposes of this chapter, including the goal to develop a seamless system of services for children and their families, would be furthered by the development of a central repository of data for planning and evaluation purposes and urges the agencies to work toward the development of such a central repository.

(b) The department, working with the following agencies, shall develop and implement a workable state-wide system for sharing data relating to the care and protection of children between such agencies, utilizing existing state-wide data bases and data delivery systems to the greatest extent possible, to streamline access to such data:

(1) Division of Family and Children Services of the department;

- (2) Department of Early Care and Learning;
- (3) Department of Community Health;
- (4) Department of Public Health;
- (5) Department of Behavioral Health and Developmental Disabilities;
- (6) Department of Juvenile Justice;
- (7) Department of Education; and
- (8) Georgia Crime Information Center.

(c) The department, working with such agencies, shall establish an interagency data protocol to enable each agency to accurately and efficiently collect and share data with the other agencies in the most effective and expeditious manner. The interagency data protocol shall:

(1) Include protocols and procedures to be used by agencies in data processing, including but not limited to collecting, storing, manipulating, sharing, retrieving, and releasing data;

(2) Delineate the specific data to be shared among all or specified agencies, the person or persons authorized by each agency to have access to another agency's data, and the security arrangements between agencies to ensure the protection of the data from unauthorized access that may threaten the privacy of persons and the confidentiality of the data;

(3) Establish the circumstances under which and the reasons for which an agency may share information with another agency, with a local political subdivision, with a nongovernmental entity, or with an individual; and

(4) Ensure compliance with all state and federal laws and regulations concerning the privacy of information, including but not limited to the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g, and the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d to 1320d-9.

(d) To further delineate the parameters for the sharing of data with one or more agencies, specific interagency agreements may be executed between or among agencies.

(e) If a federal law or regulation impedes necessary data sharing between agencies, the appropriate agency or agencies shall make all reasonable attempts to be granted a waiver or exemption from the applicable law or regulation.

(f) The Department of Human Services and any of the agencies in subsection (b) of this Code section may apprise chairpersons of the

appropriate committees of the General Assembly of the need for any legislative action necessary to facilitate or improve data sharing between agencies for the purposes of this Code section.

(g)(1) Notwithstanding any provision to the contrary, nothing in this Code section shall be construed to nullify any memorandum of understanding existing as of June 30, 2015, or prohibit the creation of memorandums of understanding on and after July 1, 2015, between or among agencies concerning data sharing or any other data sharing practices.

(2) Notwithstanding any provision to the contrary, nothing in this Code section shall prohibit the release to or sharing of data with nongovernmental entities or individuals if the release or sharing is otherwise required, permitted, or allowed pursuant to state or federal law. (Code 1981, § 49-5-24, enacted by Ga. L. 2015, p. 552, § 9/SB 138; Ga. L. 2016, p. 864, § 49/HB 737.)

Effective date. — This Code section became effective July 1, 2015.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, in paragraph

(g)(1), substituted “any memorandum” for “any memoranda” and substituted “creation of memorandums” for “creation of memoranda”.

ARTICLE 2
CHILD ABUSE RECORDS

49-5-40. Definitions; confidentiality of records; restricted access to records.

(a) As used in this article, the term:

- (1) “Abused” means subjected to child abuse.
- (2) “Child” means an individual under 18 years of age.
- (3) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent, guardian, legal custodian, or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent, guardian, legal custodian, or caretaker thereof;

(C) Sexual abuse of a child;

(D) Sexual exploitation of a child; or

(E) Emotional abuse of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be abused.

(4) "Child advocacy center" means an entity which is operated for the purposes of investigating known or suspected child abuse and treating a child or a family that is the subject of a report of child abuse and which:

(A) Has been created and supported through one or more intracommunity compacts between such center and:

(i) One or more law enforcement agencies within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;

(ii) The office of the district attorney, Attorney General, or United States Attorney;

(iii) A legally mandated public or private child protective agency within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;

(iv) A mental health board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; or

(v) A community health service board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; and

(B) Has been approved by a protocol committee established under Chapter 15 of Title 19.

(5) "Court" means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(6) "Emotional abuse" shall have the same meaning as set forth in Code Section 15-11-2.

(7) "Legal custodian" shall have the same meaning as set forth in Code Section 15-11-2.

(8) "Near fatality" means an act that places a child in serious or critical condition as certified by a physician.

(9) "Record" shall include documents, books, maps, drawings, computer based or generated information, data, data fields, digital images, photographs, video images, audio recordings, and video recordings.

(10) “Sexual abuse” means an individual’s employing, using, persuading, inducing, enticing, or coercing any child who is not that individual’s spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any individual;

(E) Flagellation or torture by or upon an individual who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of an individual who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any individual’s clothed or unclothed genitals, pubic area, or buttocks or with a female’s clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(11) “Sexual exploitation” means conduct by any individual who allows, permits, encourages, or requires any child to engage in:

(A) Trafficking of persons for labor or sexual servitude, in violation of Code Section 16-5-46;

(B) Prostitution, in violation of Code Section 16-6-9;

(C) Obscene depiction of a minor, in violation of Code Section 16-11-40.1;

(D) Nude or sexually explicit electronic transmission, in violation of Code Section 16-11-90; or

(E) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, in violation of Code Section 16-12-100.

(b) Each and every record concerning reports of child abuse and child controlled substance or marijuana abuse which is in the custody of the department, other state or local agency, or child advocacy center is declared to be confidential, and access thereto is prohibited except as provided in Code Sections 49-5-41 and 49-5-41.1.

(c) Each and every record concerning child abuse or neglect which is received by the department from the child abuse and neglect registry of any other state shall not be disclosed or used outside the department for any other purpose other than conducting background checks to be used in foster care and adoptive placements. (Ga. L. 1975, p. 1135, § 1; Ga. L. 1987, p. 1000, § 2; Ga. L. 1990, p. 1778, § 1; Ga. L. 1993, p. 1712, § 1; Ga. L. 2007, p. 478, § 7/SB 128; Ga. L. 2009, p. 43, § 1/SB 79; Ga. L. 2009, p. 733, § 3/SB 69; Ga. L. 2016, p. 160, § 2/HB 725; Ga. L. 2017, p. 774, § 49/HB 323.)

The 2016 amendment, effective July 1, 2016, rewrote this Code section.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation throughout subparagraph (a)(4)(A).

Editor's notes. — Ga. L. 2016, p. 160, § 1/HB 725, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Child Abuse Records Protection Act.'"

Law reviews. — For article, "Practical Challenges to Representing Unaccompanied Children Before the Atlanta Immigration Court," see 22 Ga. St. Bar J. 35 (April 2017).

49-5-41. Persons and agencies permitted access to records.

(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, tribal entity, or any agency of any such entity that has a need for information contained in such records in order to carry out its legal responsibilities to protect children from child abuse and neglect;

(2) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

(3) A prosecuting attorney in this state or any other state or political subdivision thereof, or for the United States, who may seek such access in connection with official duty;

(4) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

(5)(A) Any entity that receives from a school employee a report of suspected child abuse as required by Code Section 19-7-5.

(B) Within 24 hours of receiving such report, such entity shall acknowledge, in writing, the receipt of such report to the reporting

individual. Within five days of completing the investigation of the suspected child abuse, such entity shall disclose, in writing, to the school counselor for the school such child was attending at the time of the reported child abuse whether the suspected child abuse was confirmed or unconfirmed. If a school does not have a school counselor, such disclosure shall be made to the principal.

(C) As used in this paragraph, the term:

(i) "Entity" means a child welfare agency providing protective services as designated by the department or, in the absence of such agency, a law enforcement agency or prosecuting attorney.

(ii) "School" shall have the same meaning as set forth in Code Section 19-7-5;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect involving a fatality or near fatality; provided, however, that the following may be redacted from such records:

(A) Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

(A.1) Any part of a record of the department or a governmental child protective agency that includes information provided by law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

(B) Medical and mental health records made confidential by other provisions of law;

(C) Privileged communications of an attorney;

(D) The identifying information of a person who reported suspected child abuse;

(E) Information that may cause mental or physical harm to the sibling or other child living in the household of the child being investigated;

(F) The name of a child who is the subject of reported child abuse or neglect;

(G) The name of any parent or other person legally responsible for the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect; and

(H) The name of any member of the household of the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect;

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

(8) A child advocacy center that has a need for information contained in such records in order to carry out its legal responsibilities to protect children from child abuse or neglect;

(9) Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected child abuse or any review committee or protocol committee created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from child abuse and neglect, which protective actions include bringing criminal actions for such child abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4);

(10) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner which specifies the name of the child for whom such access is sought and which describes such officer's need to have access to such records in order to determine whether the laws of this state are being complied with to protect children from child abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

(11) A court, by subpoena that is filed contemporaneously with a motion seeking records and requesting an in camera inspection of

such records, may make such records available to a party seeking such records when:

(A) Such motion is filed;

(B) Such motion is served:

(i) On all parties to the action;

(ii) On the department or other entity that has possession of such records, as applicable; and

(iii) In matters other than a dependency proceeding or a civil proceeding wherein there is no related pending criminal investigation or prosecution of criminal or unlawful activity, on the prosecuting attorney, as applicable; and

(C) After an in camera inspection of such records, the court finds that access to such records appears reasonably calculated to lead to the discovery of admissible evidence.

(b)(1) Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

(2) The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a

report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

(3) Notwithstanding the provisions of this subsection, access to the child abuse registry created pursuant to Article 8 of this chapter shall not be permitted except as allowed by Article 8 of this chapter.

(c) The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may release information from such records to the following persons or agencies when deemed appropriate by such department:

(1) A physician who has before him or her a child whom he or she reasonably suspects may be abused;

(2) A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the department by locating or providing foster or adoptive homes for children in the custody of the department, a licensed adoption agency of this or any other state which is placing a child for adoption, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

(3) A person legally authorized to place a child in protective custody when such person has before him or her a child he or she reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

(4) An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

(5) An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including, but not limited to, members of officially recognized citizen review panels, court appointed guardians ad litem, certified court appointed special advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a protocol committee, as such term is defined in Code Section 19-15-1;

(6) A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the depart-

ment's investigation of a report of child abuse, the alleged abuser has left this state;

(7) A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(8) An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(9) Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

(10) Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2 of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this Code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

(10.1) Any school official of a school that a child who was the subject of a report of suspected child abuse made pursuant to Code Section 19-7-5 attends in which there is an ongoing investigation of the reported abuse. Any such ongoing investigation shall include

contact with such school to obtain any relevant information from school personnel regarding the report of suspected child abuse;

(11) The Department of Early Care and Learning or the Department of Education;

(12) An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available; or

(13) Local and state law enforcement agencies of this state, the Department of Community Supervision, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, the Department of Corrections, and the Department of Juvenile Justice when such entities, officers, or departments are providing supervision or services to individuals and families to whom the department is also providing services. Such access or release of records shall not be provided when prohibited by federal law or regulation. Access to such records may be provided electronically.

(d) Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is disclosed regarding such child. Notwithstanding the provisions of this subsection, a foster parent, as an agent of the department, shall have access to a child's medical and educational records in the same manner and to the same extent as the department itself and to the fullest extent allowable by law to ensure the proper care and education of a child entrusted to the foster parent's care.

(e)(1) Except as provided in paragraph (2) of this subsection and notwithstanding any other provisions of law, child abuse and depen-

dependency records shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50 if the records are applicable to a child who at the time of his or her fatality or near fatality was:

(A) In the custody of a state department or agency or in the care of a foster parent;

(B) A child as defined in paragraph (3) of Code Section 15-11-741; or

(C) The subject of an investigation, report, referral, or complaint under Code Section 15-11-743.

(2) The following may be redacted from such records:

(A) Medical and mental health records made confidential by other provisions of law;

(B) Privileged communications of an attorney;

(C) The identifying information of a person who reported suspected child abuse;

(D) The name of a child who suffered a near fatality;

(E) The name of any sibling of the child who suffered the fatality or near fatality;

(F) Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records; or

(G) Any part of a record of the department or a governmental child protective agency that includes information provided by law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records.

(3) Upon the release of documents pursuant to this subsection, the department may comment publicly on the case.

(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused shall be permitted access to records concerning a report of child abuse allegedly committed against him or her which are in the custody of a child advocacy center, the department, or other state or local agency when he or she reaches 18 years of age; provided, however, that prior to such child reaching 18 years of age, if the requestor is not the subject of such records, such records shall be made available to such child's parent or legal guardian or a deceased child's duly appointed representative when the requestor or his or her attorney submits a sworn affidavit to the applicable child advocacy center, the department, or other state or local agency that attests that such

information is relevant to a pending or proposed civil action relating to damages sustained by such child; and provided, further, that such records concerning a report of child abuse shall still be subject to confidentiality pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72. Such records concerning a report of child abuse shall not be subject to release under paragraph (11) of subsection (a) of this Code section or subsection (g) of this Code section.

(g)(1) A subpoena authorized under paragraph (11) of subsection (a) of this Code section shall be served on the prosecuting attorney who has jurisdiction over a pending investigation or prosecution of criminal or unlawful activity, if such information is known to the individual seeking such access or disclosure.

(2) A prosecuting attorney may intervene in an action involving a motion filed under paragraph (11) of subsection (a) of this Code section.

(3)(A) When a court issues an order pursuant to paragraph (11) of subsection (a) of this Code section, the court shall issue a protective order to ensure the confidentiality of such records. Such protective order may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense and may include one or more of the following:

(i) That the records not be reproduced except as authorized by court order;

(ii) That the records be viewed or disclosed only on specified terms and conditions;

(iii) That the records be sealed and only opened by court order;

(iv) That the order be applicable to all parties, their counsel, and any agent or representative of a party; or

(v) That records released pursuant to such order be returned to the court upon completion of the matter that caused the production of such records.

(B) Any person who fails to obey a protective order issued under this subsection shall be punished as contempt by the court. (Ga. L. 1975, p. 1135, § 2; Ga. L. 1990, p. 1778, § 2; Ga. L. 1991, p. 1320, §§ 1-3; Ga. L. 1993, p. 979, § 2; Ga. L. 1993, p. 1712, § 2; Ga. L. 1994, p. 967, §§ 1, 2; Ga. L. 1996, p. 1143, § 1; Ga. L. 1997, p. 844, § 4; Ga. L. 1998, p. 609, § 5; Ga. L. 2000, p. 243, § 3; Ga. L. 2001, p. 4, § 49; Ga. L. 2002, p. 861, § 1; Ga. L. 2003, p. 497, § 1; Ga. L. 2004, p. 645, § 16; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2007, p. 478, § 8/SB 128; Ga. L. 2009, p. 43, §§ 2, 3/SB 79; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 316, § 1/HB 303; Ga. L. 2013, p.

294, § 4-56/HB 242; Ga. L. 2014, p. 34, § 2-10/SB 365; Ga. L. 2015, p. 552, § 10/SB 138; Ga. L. 2015, p. 689, § 5/HB 17; Ga. L. 2015, p. 845, § 1/HB 177; Ga. L. 2016, p. 160, § 3/HB 725; Ga. L. 2016, p. 864, § 49/HB 737; Ga. L. 2017, p. 344, §§ 1, 2/HB 75; Ga. L. 2017, p. 345, § 1/SB 168; Ga. L. 2017, p. 774, § 49/HB 323; Ga. L. 2018, p. 1112, § 49/SB 365.)

The 2014 amendment, effective July 1, 2014, rewrote subsections (a) and (e); and at the end of paragraph (c)(5), substituted “a protocol committee, as such term is defined in Code Section 19-15-1” for “a county child abuse protocol committee or task force.”

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subsection (c), inserted “or her” and “or she” in paragraphs (1) and (3), substituted “department” for “Department of Human Services” in paragraph (2), and added paragraph (10.1); and added the last sentence in subsection (d). The second 2015 amendment, effective July 1, 2015, added subsection (f). The third 2015 amendment, effective July 1, 2015, added paragraph (a)(5.1).

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, rewrote subsections (a) and (f); and added subsection (g). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (a)(6)(H) and revised language in subsection (f). See Editor’s notes regarding the effect of these amendments.

The 2017 amendments. — The first 2017 amendment, effective July 1, 2017, added subparagraph (a)(6)(A.1); in paragraph (e)(2), deleted “and” at the end of subparagraph (e)(2)(E), substituted “; or” for the period at the end of subparagraph (e)(2)(F), and added subparagraph (e)(2)(G). The second 2017 amendment, effective July 1, 2017, inserted “a licensed adoption agency of this or any other state which is placing a child for adoption,” in

the middle of paragraph (c)(2); substituted “court appointed special advocate” for “Court Appointed Special Advocate” in the middle of paragraph (c)(5); deleted “or” at the end of paragraph (c)(11); substituted “; or” for a period at the end of paragraph (c)(12); and added paragraph (c)(13). The third 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(1) and division (a)(5)(C)(i), substituted “the commissioner” for “the commissioner of the department” near the beginning of paragraph (a)(10), and revised language throughout subsection (f).

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, revised punctuation in the middle of paragraph (c)(5).

Editor’s notes. — Ga. L. 2016, p. 160, § 1/HB 725, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Child Abuse Records Protection Act.’”

Ga. L. 2016, p. 864, § 54(e)/HB 737, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2016 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to this Code section by Ga. L. 2016, p. 864, § 49/HB 737 was not given effect.

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 25 (2014).

JUDICIAL DECISIONS

Court’s failure to provide access to records. — Although the trial court considered the records of the Department of

Family and Children Services in reaching the court’s verdict, the court erred in declining to provide access to the records,

erroneously believing that the parties had to request that the records be admitted into evidence or be included in the record. *Donohoe v. Donohoe*, 323 Ga. App. 473, 746 S.E.2d 185 (2013).

49-5-44. Penalties for unauthorized access to records; use of records in public and criminal proceedings.

(a) Any person who authorizes or permits any person or agency not listed in Code Section 49-5-41 to have access to such records concerning reports of child abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor.

(b) Any person who knowingly and under false pretense obtains or attempts to obtain records or reports of child abuse declared confidential by Code Section 49-5-40 or information contained therein except as authorized in this article or Code Section 19-7-5 shall be guilty of a misdemeanor.

(c) Records made confidential by Code Section 49-5-40 and information obtained from such records shall not be made a part of any record which is open to the public except that:

(1) A district attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse; and

(2) The parties in a civil action may use and make public that record or information in the course of a civil action for childhood sexual abuse, as such term is defined in Code Section 9-3-33.1. (Ga. L. 1975, p. 1135, § 3; Ga. L. 1990, p. 1778, § 3; Ga. L. 2015, p. 689, § 6/HB 17.)

The 2015 amendment, effective July 1, 2015, in subsection (c), in the introductory language, substituted “shall not” for “may not” and added a colon at the end; added the paragraph (c)(1) designator, and in subsection (c)(1), substituted “A district” for “a district” at the beginning,

and added “; and” at the end; and added paragraph (c)(2).

Law reviews. — For article, “Practical Challenges to Representing Unaccompanied Children Before the Atlanta Immigration Court,” see 22 Ga. St. Bar J. 35 (April 2017).

49-5-46. Immunity from liability of department, agency, or child advocacy center.

The department, an agency, a child advocacy center, and employees thereof providing access to or disclosure of records or information as authorized by Code Section 49-5-41 shall have no civil liability or criminal responsibility therefor. (Code 1981, § 49-5-46, enacted by Ga. L. 1990, p. 1778, § 4; Ga. L. 2016, p. 160, § 4/HB 725.)

The 2016 amendment, effective July 1, 2016, substituted the present provisions of this Code section for the former provisions, which read: “The department or any agency and employees of either providing access to or disclosure of records or information as authorized by Code Sec-

tion 49-5-41 shall have no civil or criminal liability therefor.”

Editor’s notes. — Ga. L. 2016, p. 160, § 1/HB 725, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Child Abuse Records Protection Act.’”

ARTICLE 3

EMPLOYEES’ RECORDS CHECKS FOR CHILD WELFARE AGENCIES

49-5-62. Records check application for director of new facility; preliminary records check for employees; retention of fingerprints.

(a) Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and a preliminary records check for each employee of such facility that is satisfactory. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received satisfactory state and national fingerprint records check determinations that were satisfactory and each employee received a preliminary records check determination that was satisfactory, or that any employee other than the director whose preliminary records check revealed a criminal record of any kind has either subsequently received state and national fingerprint records check determinations that were satisfactory or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. The department may either perform preliminary records checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to GCIC information to have those agencies perform for the department a preliminary records check for each preliminary records check application submitted thereto by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing preliminary records checks.

(b) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. The time frames set forth in this Code section shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

(Code 1981, § 49-5-62, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1999, p. 539, § 2; Ga. L. 1999, p. 574, § 4; Ga. L. 2018, p. 507, § 2-14/SB 336.)

The 2018 amendment, effective July 1, 2018, designated the existing provisions of this Code section as subsection (a); in subsection (a), in the first and second sentences deleted “satisfactory” preceding “preliminary records check”, and, in the second sentence deleted “sat-

isfactory” preceding “state and national”, added “that is satisfactory” at the end of the first sentence, and, in the second sentence, inserted “that were satisfactory” and “that was satisfactory” in the middle, and inserted “that were satisfactory” near the end; and added subsection (b).

49-5-63. Notice of determination; issuance of license; effect of unsatisfactory determination.

After being furnished the required records check application under Code Section 49-5-62, the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department’s determination as to that person’s state fingerprint records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to each employee of an applicant’s facility and the state fingerprint records check was satisfactory as to the director, that applicant may be issued a license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the state or national fingerprint records check determination was unsatisfactory as to the director of an applicant’s facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 49-5-62 and this Code section to obtain state and national fingerprint records checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained state and national fingerprint records check determinations that are satisfactory or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. If the determination was unsatisfactory as to any employee of an applicant’s facility, the applicant shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Any employee other than the director who receives a preliminary records check determination that is satisfactory shall not be required to obtain a fingerprint records check when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 49-5-69. (Code 1981, § 49-5-63, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1;

Ga. L. 1986, p. 10, § 49; Ga. L. 1987, p. 1416, § 2; Ga. L. 1999, p. 539, § 3; Ga. L. 1999, p. 574, § 5; Ga. L. 2018, p. 507, § 2-15/SB 336.)

The 2018 amendment, effective July 1, 2018, in this Code section, in the fourth sentence, deleted “satisfactory” preceding “state and national” in the middle, inserted “that are satisfactory” near the end, and substituted the present provisions of the last sentence for the former provisions, which read: “Any employee other

than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 49-5-69.”

49-5-64. Fingerprint records check; retention.

(a) The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the state fingerprint records check or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau’s report, the department shall make a national fingerprint records determination.

(b) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 49-5-64, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 3; Ga. L. 1999, p. 539, § 4; Ga. L. 1999, p. 574, § 6; Ga. L. 2018, p. 507, § 2-16/SB 336.)

The 2018 amendment, effective July 1, 2018, designated the existing provi-

sions of this Code section as subsection (a); and added subsection (b).

49-5-68. Change of director.

(a) If the director of a facility which has been issued a license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any

information the licensee may have regarding preliminary or any fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own records as to whether satisfactory or unsatisfactory preliminary or state and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or state or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director's facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary or state or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there have been no state and national fingerprint records check determinations regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the fingerprint records check application of the newly designated director after the date the notification is sent by the department or the license of that facility shall be indefinitely suspended or revoked. If that fingerprint records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director; and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint records check determination for that director as provided in Code Sections 49-5-64 and 49-5-65. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determi-

nation from the department. If that determination is satisfactory, the center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply.

(d) The time frames set forth in this Code section shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33. (Code 1981, § 49-5-69, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-68, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 7; Ga. L. 1999, p. 539, § 8; Ga. L. 1999, p. 574, § 10; Ga. L. 2018, p. 507, § 2-17/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (d).

49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; violations; foster parents known to have criminal records; retention of fingerprints.

(a) No licensed child welfare agency, as defined in subsection (a) of Code Section 49-5-12, shall place a child in a foster care home unless the foster parent or parents of the home and other adult persons that reside in the home or provide care to children placed in the home have received a satisfactory preliminary records check determination. Additionally, no child shall continue to be placed in such foster care home unless the foster parent or parents also subsequently receive a satisfactory fingerprint records check determination. A child welfare agency or any applicant for a license for such an agency shall be required to submit to the department a preliminary records check application and a records check application for the foster parent or parents of any foster care home used by the agency and a preliminary records check application for any other adult persons that reside in the home or provide care to children placed in the home. In lieu of such applications, the agency or license applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months such foster parent or parents or other adult persons have received a satisfactory fingerprint records check determination or a satisfactory preliminary records check determination.

(b) After receiving or obtaining the fingerprint records check determinations or the preliminary records check determinations, the department shall notify in writing the agency or license applicant as to each person for whom an application was received regarding whether the

department's determinations were satisfactory or unsatisfactory. If any such determinations are unsatisfactory, such homes shall not be used by the child welfare agency as foster care homes.

(c) The department shall have the authority to take any of the actions enumerated in subsection (c) of Code Section 49-2-17 if a licensed child welfare agency or an applicant for such a license violates any provision of this Code section.

(d) An executive director of a child welfare agency that uses a foster care home with a foster parent or parents or other adult persons referenced in this Code section whom the executive director knows or should reasonably know to have a criminal record shall be guilty of a misdemeanor.

(e) In addition to any other requirement established by law, the submission of fingerprints shall be a prerequisite to the issuance of a license or authorization for the operation of a foster home or to serve as foster parents as provided in this article. Such fingerprints shall be used for the purposes of fingerprint checks by the Georgia Crime Information Center and the Federal Bureau of Investigation.

(f) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. The time frames set forth in this Code section shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33. (Code 1981, § 49-5-69.1, enacted by Ga. L. 1993, p. 757, § 2; Ga. L. 1994, p. 409, § 2; Ga. L. 1999, p. 539, § 10; Ga. L. 2009, p. 453, § 2-24/HB 228; Ga. L. 2018, p. 507, § 2-18/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (f).

ARTICLE 5

RECORDS CHECKS FOR PERSONS SUPERVISING CHILDREN

49-5-111. Employers authorized to make records checks; procedure; retention of fingerprints.

(a) On and after July 1, 1986, an employer may require that a new or current employee or volunteer submit to a records check for the purpose of determining whether such person has ever been convicted of a crime or has a criminal record.

(b) An employer seeking a records check on an employee shall submit a records check application to the GCIC. Upon receipt thereof, the GCIC shall promptly conduct a search of its records and records to which it has access. Within a reasonable time after receiving the application, the GCIC shall notify the employer in writing of any criminal record finding or of the fact of no such finding.

(c) If the employer is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this article for such program and the employer shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 49-5-111, enacted by Ga. L. 1986, p. 669, § 1; Ga. L. 2018, p. 507, § 2-19/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (c).

49-5-115. Letter issued by Department of Early Care and Learning in lieu of background screening or fingerprint checks.

In lieu of any background screening or fingerprint check required pursuant to any state law or any department regulation for an individual who provides short-term care for a child in the custody of the department, the department is authorized to accept a letter issued within the previous 12 months by the Department of Early Care and Learning stating that such individual has received a satisfactory determination by the Department of Early Care and Learning in accordance with Article 2 of Chapter 1A of Title 20. (Code 1981, § 49-5-115, enacted by Ga. L. 2017, p. 481, § 1/HB 250.)

Effective date. — This Code section became effective May 8, 2017.

ARTICLE 6
PROGRAMS AND PROTECTION FOR CHILDREN
PART 2
DELINQUENCY PREVENTION AND COMMUNITY BASED SERVICES

49-5-155. Effect of article on Department of Juvenile Justice; office as recipient entity for federal grants.

(a) This article shall in no way preempt, duplicate, or supersede services, duties, or other functions performed pursuant to law or regulations by the Department of Juvenile Justice.

(b) Other than the Department of Juvenile Justice, the Governor's Office for Children and Families created pursuant to Code Section 49-5-132 and the Criminal Justice Coordinating Council shall be the only other authorized controlling recipient entity for grants under the United States Department of Justice Juvenile Justice Delinquency and Prevention Grants. (Code 1981, § 49-5-155, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 13; Ga. L. 1992, p. 1983, § 34; Ga. L. 1997, p. 1453, § 1; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2015, p. 890, § 8/HB 263.)

The 2015 amendment, effective July 1, 2015, inserted "and the Criminal Justice Coordinating Council" in subsection (b).

ARTICLE 8

CENTRAL CHILD ABUSE REGISTRY

Effective date. — This article became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 552, § 11/SB 138, effective July 1, 2015, repealed the Code sections formerly codified at Title 49, Chapter 5, Article 8 and enacted the current Title 49, Chapter 5, Article 8. The former Title 49, Chapter 5, Article 8 consisted of Code Sections 49-5-180 through 49-5-183, 49-5-183.1,

and 49-5-184 through 49-5-187, relating to the central child abuse registry, and was based on Ga. L. 1990, p. 1772, § 1; Ga. L. 1991, p. 1320, § 4; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, §§ 2, 3 and 4; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 609, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 99, § 93/HB 24; Ga. L. 2013, p. 222, § 20/HB 349.

49-5-180. Definitions.

As used in this article, the term:

(1) "Abuse investigator" means the division, any county department, or any designee thereof.

(2) "Alleged child abuser" means an individual named in an abuse investigator's report as having committed a substantiated case.

(3) "Child" means an individual under 18 years of age.

(4) "Child abuse" shall have the same meaning as in paragraph (4) of subsection (b) of Code Section 19-7-5.

(5) "Child abuse registry" means the Child Protective Services Information System.

(6) "Division" means the Division of Family and Children Services of the department.

(7) "Out-of-state abuse investigator" means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

(8) “Sexual abuse” shall have the same meaning as in paragraph (10) of subsection (b) of Code Section 19-7-5.

(9) “Sexual exploitation” shall have the same meaning as in paragraph (11) of subsection (b) of Code Section 19-7-5.

(10) “Substantiated case” means an investigation of a child abuse report by an abuse investigator which has been confirmed based upon a preponderance of the evidence that child abuse has occurred. (Code 1981, § 49-5-180, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, substituted “county department” for “county or district department of family and children services” in paragraph (1); substituted “an individual” for “a person” in paragraph (2); substituted “an individual” for “any person” in paragraph (3); substituted “shall have” for “has” in paragraph (4); deleted former paragraph (5), relating to the definition of “child abuse crime”; redesignated former paragraph (6) as present paragraph (5); deleted former paragraph (7), relating to the definition of “convicted”; deleted former paragraph (8), relating to the definition of “convicted child abuser”; redesignated former paragraphs (9) through (13) as present paragraphs (6) through (10), respectively; and substituted “shall have” for “has” in para-

graphs (8) and (9). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised language in this Code section. See Editor’s notes regarding the effect of these amendments.

Editor’s notes. — Ga. L. 2016, p. 864, § 54(e)/HB 737, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2016 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to this Code section by Ga. L. 2016, p. 864, § 49(3)/HB 737 was not given effect.

49-5-181. Establishment of central registry; function of registry.

(a) The division shall establish and maintain a central child abuse registry which shall be known as the “Child Protective Services Information System.” The child abuse registry shall receive notice regarding substantiated cases occurring on and after July 1, 2016, reported to the division pursuant to Code Section 49-5-182.

(b) The child abuse registry shall be operated in such a manner as to enable abuse investigators to:

(1) Immediately identify and locate substantiated cases; and

(2) Maintain and produce aggregate statistical data of substantiated cases. (Code 1981, § 49-5-181, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905.)

The 2016 amendment, effective July 1, 2016, substituted the present provisions of subsection (a) for the former provisions, which read: “The division shall

establish and maintain a central child abuse registry which shall be known as the 'Child Protective Services Information System.' The child abuse registry shall receive notice regarding:

"(1) Substantiated cases occurring on and after July 1, 2016, reported to the division pursuant to subsection (a) of Code Section 49-5-182; and

"(2) Convicted child abusers on and after July 1, 2016, reported to the division pursuant to subsection (b) of Code Section 49-5-182."; deleted "and convicted child abusers" following "cases" in paragraph (b)(1); and deleted "and cases of child abuse in which a person was convicted" following "cases" in paragraph (b)(2).

49-5-182. Notice to division of substantiated case resulting from investigation by abuse investigator.

An abuse investigator who completes the investigation of a child abuse report made pursuant to Code Section 19-7-5 or otherwise and determines that it is a substantiated case if the alleged child abuser was at least 13 years of age at the time of the commission of the act shall notify the division within 30 business days following such determination. Such notice may be submitted electronically and shall include the following:

(1) Name, age, sex, race, social security number, if known, and birthdate of the child alleged to have been abused;

(2) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the child alleged to have been abused, if known;

(3) Name, age, sex, race, social security number, and birthdate of the person who committed the substantiated case; and

(4) A summary of the known details of the child abuse which at a minimum shall contain the classification of the abuse as provided in paragraph (4) of subsection (b) of Code Section 19-7-5 as either sexual abuse, physical abuse, child neglect, or a combination thereof. (Code 1981, § 49-5-182, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, deleted the subsection (a) designation; and deleted former subsection (b), which read: "Upon receipt of a sentence for a convicted child abuser, the prosecuting attorney shall notify the division within 30 business days following such receipt. Such notice may be submitted electronically and shall include the following:

"(1) A certified copy of the sentence;

"(2) A complete history of the conviction, including a certified copy of the indictment,

accusation, or both, and such other information as the division may require;

"(3) Name, age, sex, race, social security number, and birthdate of the victim of child abuse by the convicted child abuser, if known; and

"(4) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the victim of child abuse by the convicted child abuser, if known." The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code,

revised punctuation in paragraph (b)(2). See Editor's notes regarding the effect of these amendments.

Editor's notes. — Ga. L. 2016, p. 864, § 54(e)/HB 737, not codified by the General Assembly, provides that: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the

2016 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to this Code section by Ga. L. 2016, p. 864, § 49(3)/HB 737 was not given effect.

49-5-183. Division to update registry upon notification of substantiated case; notice to alleged abuser; representation of alleged minor child abuser; hearing on expungement of name from registry.

(a) Upon receipt of an investigator's report of a substantiated case pursuant to Code Section 49-5-182 naming an alleged child abuser, the division:

(1) Shall include in the child abuse registry the name of the alleged child abuser, the classification of the abuse as provided in paragraph (4) of Code Section 49-5-182, and a copy of the investigator's report; and

(2) Shall mail to such alleged child abuser in such report a notice regarding the substantiated case via certified mail, return receipt requested. It shall be a rebuttable presumption that any such notice has been received if the return receipt has been received by the division. The notice shall further inform such alleged child abuser of his or her right to a hearing to appeal such determination. The notice shall further inform such alleged child abuser of the procedures for obtaining the hearing and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(b) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (d) of this Code section shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the division to apply to the superior court of the county in which the alleged act of child abuse was committed to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by such county.

(c) In order to exercise such right to a hearing, the alleged child abuser shall file a written request for a hearing with the division within ten days after receipt of such notice. The written request shall contain the alleged child abuser's current residence address and, if he or she has a telephone, a telephone number at which he or she may be notified of the hearing.

(d) If the division receives a timely written request for a hearing under subsection (c) of this Code section, it shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether, based on a preponderance of evidence, there was child abuse committed by the alleged child abuser to justify the investigator's determination of a substantiated case. The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the division by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the division, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, such hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within this state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county in which the alleged act of child abuse was committed. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(e) At the conclusion of the hearing under subsection (d) of this Code section, upon a finding that there is not a preponderance of evidence to

conclude that the alleged child abuser committed an act of child abuse, the administrative law judge shall order that the alleged child abuser's name be removed from the child abuse registry. The general public shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article, and the files and records relating thereto shall be confidential and not subject to public inspection.

(f) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (e) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of such decision in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the petition for review shall be filed within ten days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be substantially the same as those for judicial review of contested cases under Code Section 50-13-19 except that the filing of a petition for judicial review stays the listing of the petitioner's name upon the child abuse registry, and the superior court shall conduct the review and render its decision thereon within 30 days following the filing of the petition. The review and records thereof shall be closed to the public and not subject to public inspection.

(g) The administrative law judge shall transmit to the division his or her decision regarding the alleged child abuser and the investigator's report regarding such individual within ten days following that decision unless a petition for judicial review of that decision is filed within the permitted time period. If a timely petition for judicial review is filed within the permitted time period, the superior court shall transmit to the division its decision regarding the alleged child abuser and the investigator's report regarding such individual within ten days following that decision.

(h) With regard to a minor child alleged to have committed abuse, the division shall remove such individual's name from the registry if:

(1) He or she has reached 18 years of age;

(2) More than one year has passed from the date of the act or omission that resulted in a substantiated case and there have been no subsequent acts or omissions resulting in a substantiated case; and

(3) He or she can prove by a preponderance of the evidence that he or she has been rehabilitated. (Code 1981, § 49-5-183, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, deleted “subsection (a) of” preceding “Code Section 49-5-182” in the introductory paragraph of subsection (a); deleted “of subsection (a)” preceding “of Code Section 49-5-182” in paragraph (a)(1); substituted “his or her” for “such person’s” in the third sentence of paragraph (a)(2); in subsection (c), substituted “child abuser shall” for “child abuser must” in the first sentence, and in the second sentence, substituted “if he or she has” for “the person

has”, and substituted “which he or she” for “which such person”; in subsection (d), substituted “such hearing” for “that hearing” in the middle of the sixth sentence, and substituted “this state” for “the state” in the middle of the tenth sentence; added a comma following “article” in the last sentence of subsection (e); and added subsection (h). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in the last sentence of subsection (e).

49-5-184. Expungement hearing.

(a) An individual whose name appears in the child abuse registry as having committed a substantiated case shall be entitled to a hearing for an administrative determination of whether or not expungement of such individual’s name should be ordered. In order to exercise such right, the individual shall file a written request for a hearing with the division. The provisions of this subsection shall not apply to individuals who have waived a hearing after receipt of notice.

(b) Upon receipt by the division of a written request for a hearing pursuant to subsection (a) of this Code section, the division shall transmit such request to the Office of State Administrative Hearings within ten days of receipt. The Office of State Administrative Hearings shall conduct a hearing in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except as otherwise provided in this Code section. A hearing shall be conducted within 60 days following receipt of the request by the Office of State Administrative Hearings. Upon a finding that there is no credible evidence that the individual who requested the hearing is the individual who had a substantiated case, the Office of State Administrative Hearings shall order the division to expunge that name from the registry. The general public shall be excluded from such hearings, and the files and records relating thereto shall be confidential and not subject to public inspection.

(c) Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings pursuant to subsection (b) of this Code section shall constitute the final agency decision. Any party shall have the right of judicial review of that decision in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that the petition for review shall be filed within 30 days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton

County. The procedures for such appeal shall be the same as those for judicial review of contested cases under Code Section 50-13-19. The review and records thereof shall be closed to the public and not subject to public inspection. (Code 1981, § 49-5-184, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, deleted former subsection (a), which read: “Upon receipt of a notice from a prosecuting attorney pursuant to subsection (b) of Code Section 49-5-182, the division shall include in the child abuse registry the name of the convicted child abuser, the offense for which he or she was convicted, and whether the offense is considered physical abuse, neglect or exploitation, sexual abuse, or sexual exploitation.”; redesignated former subsection (b) as present subsection (a), and, in subsection (a), in the first sentence, substituted “An individual” for “Any person”, substituted “having committed a substantiated case” for “a convicted child abuser” near the middle, and substituted “individual’s name” for “person’s name” near the end, in the second sentence, substituted “individual

shall” for “person must”, and in the third sentence, substituted “apply to individuals who have waived a hearing” for “apply to persons who have waived their hearing”; redesignated former subsection (c) as present subsection (b), and, in subsection (b), substituted “subsection (a)” for “subsection (b)” in the first sentence, and substituted “individual who requested the hearing is the individual who had a substantiated case” for “person who requested the hearing is a convicted child abuser” in the next-to-last sentence; redesignated former subsection (d) as present subsection (c), and, in subsection (c), substituted “subsection (b)” for “subsection (c)” in the first sentence. The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c) (now subsection (b)).

49-5-185. Access to information in registry; statistical analysis of substantiated cases and convictions entered into child abuse registry; requests to determine if one’s name is included in registry.

(a) Except as otherwise authorized in subsection (c) of this Code section and subsection (b) of Code Section 49-5-186, the only persons or entities that may access or be provided any information from the child abuse registry are:

(1) An abuse investigator who has investigated or any federal, federally recognized tribal, state, or local governmental entity of this or any other state or any agent of such governmental agencies which is investigating or responding to a report of a case of possible child abuse or is investigating a case of possible child abuse and who shall only be provided information relating to such case for purposes of using such information in such investigation;

(2) State or other government agencies of this state or any other state which license entities that have interactions with children or are responsible for providing care for children or licensed entities in this state which interact with children or are responsible for provid-

ing care for children and which shall only be provided information for purposes of licensing or employment of a specific individual;

(3) A licensing entity, which may disclose information from the child abuse registry in a written notice to an applicant or licensed entity whose license is denied or revoked as a result of information found in the registry, to the extent that such information is required in such notice by a federal or state law, regulation, or policy or in a proceeding arising from an adverse action taken against a licensed entity or individual as a result of information found in the registry;

(4) The Department of Early Care and Learning, which is authorized to disclose all or a portion of the information from the child abuse registry used to determine that a records check is unsatisfactory or to rescind a determination that a records check is satisfactory to an individual who has submitted a records check application or whose satisfactory records check determination has been rescinded in accordance with Article 2 of Chapter 1A of Title 20;

(5) An affiliate court appointed special advocate program, as such term is defined in Code Section 15-11-2, which information shall be provided and used solely for the purpose of screening and selecting employees and volunteers of such affiliate court appointed special advocate program and screening and selecting individuals to serve as a CASA, as such term is defined in Code Section 15-11-2;

(6) Any federal, federally recognized tribal, state, or local governmental entity of this or any other state or any agent of such governmental entities requesting information concerning any prospective foster or adoptive parent or any adult living in the home of the prospective foster or adoptive parent, which information shall be provided and used solely for the purpose of conducting background checks of prospective foster or adoptive parents;

(7) Any child-placing agency of this state licensed to place children in foster homes or for adoption requesting information concerning any prospective foster or adoptive parent, which information shall be provided and used solely for the purpose of conducting background checks of foster parents or adoptive parents; and

(8) Any entity licensed by any other state to place children for adoption which information shall be provided at the discretion of the division and used solely for the purpose of conducting background checks on adoptive parents or prospective adoptive parents.

(b) The division shall provide the Governor's office, the General Assembly, district attorneys, and law enforcement agencies with a statistical analysis of substantiated cases of child abuse entered into the child abuse registry at the end of each calendar year. This analysis

shall not include the names of any children, parents, or persons associated with the child abuse. This analysis shall not be protected by any laws prohibiting the dissemination of confidential information.

(c) An individual may make a written request to the division to find out whether his or her name is included in the child abuse registry. Upon presentation of a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall disclose to such individual whether his or her name is included in the child abuse registry and, if so, the date upon which his or her name was listed in the registry.

(d) The division shall provide persons and entities authorized in subsection (a) of this Code section with access to or information from the child abuse registry sufficient to meet the requirements prescribed by Congress as conditions to federal funding for programs administered by such persons or entities. (Code 1981, § 49-5-185, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737; Ga. L. 2017, p. 345, § 2/SB 168.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, substituted “that may” for “who may” in the introductory paragraph of subsection (a); inserted “and” near the middle of paragraphs (a)(1) and (a)(2); twice substituted “such” for “that” in paragraph (a)(1); inserted “, which” near the beginning of paragraphs (a)(3) and (a)(4); in paragraph (a)(3), in the middle, added a comma following “regulation”, deleted a comma following “or policy”, and deleted “and” at the end; substituted “; and” for a period at the end of paragraph (a)(4); added paragraph (a)(5); deleted “and convicted child abusers” following “cases of child abuse” in the first sentence of subsection (b); in subsection (c), in the first sentence, substituted “An individual” for “A person”, and substituted “his or her” for “such person’s”, in the second sentence, substituted “individual” for “person” in the middle, and deleted “and the substantiated case or child abuse crime for which such person was convicted” following “registry” at the end;

and substituted “such persons or entities” for “such entities or persons” at the end of subsection (d). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(3), substituted “entity, which may” for “entity may”, and substituted “regulation, or policy” for “regulation or policy,”; and, in paragraph (a)(4), substituted “Learning, which is” for “Learning is”.

The 2017 amendment, effective July 1, 2017, inserted “or any federal, federally recognized tribal, state, or local governmental entity of this or any other state or any agent of such governmental agencies which is investigating or responding to a report of a case of possible child abuse” near the beginning of paragraph (a)(1); deleted “and” at the end of paragraph (a)(4); substituted “; and” for the period at the end of paragraph (a)(5); and added paragraphs (a)(6) through (a)(8).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, “and” was deleted at the end of paragraph (a)(5).

49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.

(a) Information in the child abuse registry shall be confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, and access thereto is prohibited except as provided in this article. Such information shall not be deemed to be a record of child abuse for purposes of Article 2 of this chapter.

(b)(1) Information obtained from the child abuse registry shall not be made a part of any record which is open to the public except as provided in paragraph (2) of this subsection; provided, however, that a district attorney may use such information in any court proceeding in the course of any criminal prosecution, if such information is otherwise admissible.

(2) Notwithstanding any other provisions of law, information in the child abuse registry applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent, which information relates to the child while in the custody of such state department or agency or foster parent, shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50.

(c) Any person who knowingly provides any information from the child abuse registry to a person not authorized to be provided such information under this article shall be guilty of a misdemeanor.

(d) Any person who knowingly and under false pretense obtains or attempts to obtain information which was obtained from the child abuse registry, except as authorized in this article, shall be guilty of a misdemeanor. (Code 1981, § 49-5-186, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905; Ga. L. 2016, p. 864, § 49/HB 737.)

The 2016 amendments. — The first 2016 amendment, effective July 1, 2016, added a comma following “Title 50” in the first sentence of subsection (a). The second 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, made identical changes.

49-5-187. Immunity from civil or criminal liability.

The division and other authorized agencies, entities, and persons and the employees thereof providing information from the child abuse registry as authorized by this article and any person who uses such information shall have no civil liability or criminal responsibility therefor. (Code 1981, § 49-5-187, enacted by Ga. L. 2015, p. 552, § 11/SB 138; Ga. L. 2016, p. 773, § 8/HB 905.)

Editor’s notes. — Ga. L. 2016, p. 773,
§ 8/HB 905, effective July 1, 2016, reen-
acted this Code section without change.

CHAPTER 6
SERVICES FOR THE AGING

Article 5		Article 7	
Community Care and Services for the Elderly		Licensure of Adult Day Center	
Sec.		Sec.	
49-6-60.	Legislative intent.	49-6-86.	Reasonable fees for licensure of adult day centers; use of fees.
49-6-61.	Definitions.	Article 8	
49-6-62.	Establishment of community care unit; provision of services; annual service plan; annual progress report; fees and contributions; funding.	Alzheimer’s and Related Dementias State Plan	
49-6-63.	Establishment by lead agency of community care service system; certification for benefits; evaluation by assessment team; volunteers; insurance coverage.	49-6-90.	Mobilization for state response to Alzheimer’s and dementia patients; intent.
		49-6-91.	Definitions.
		49-6-92.	Establishment of advisory council; membership; advisory nature; review and recommendations; operation of council; reporting.

ARTICLE 5
COMMUNITY CARE AND SERVICES FOR THE ELDERLY

Editor’s notes. — Ga. L. 2016, p. 737, Article, but did not amend Code Section
§ 1/HB 1085, purported to amend this 49-6-64.

49-6-60. Legislative intent.

The purpose of this article is to assist functionally impaired elderly persons in living dignified and reasonably independent lives in their own homes or in the homes of relatives or caregivers through the development, expansion, reorganization, and coordination of various community based services. In recognition of the desire of older Georgians to reside at home or with their families as long as possible, the General Assembly intends that a continuum of care be established so that functionally impaired elderly persons age 60 and older may be assured the least restrictive environment suitable to their needs. The General Assembly further intends to maximize the utilization of existing community social and health services in order to prevent unnecessary placement of individuals in long-term care facilities. The develop-

ment of innovative approaches to program management, staff training, and service delivery that impact on cost avoidance, cost effectiveness, and program efficiency shall be encouraged. It is further the intent of the General Assembly that the Department of Community Health shall serve as the agency responsible for planning and implementing the provision of community based services to the elderly reimbursable under the “Georgia Medical Assistance Act of 1977.” (Code 1933, § 88-1901D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-60, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-25/HB 228; Ga. L. 2016, p. 737, § 1/HB 1085.)

The 2016 amendment, effective July 1, 2016, substituted “Department of Community Health” for “Department of Human Resources (now known as the Department of Human Services)” in the middle of the last sentence of this Code section.

49-6-61. Definitions.

As used in this article, the term:

(1) “Department” means the Department of Community Health.

(2) “Division” means the organizational unit within the Department of Community Health responsible for the administration of the “Georgia Medical Assistance Act of 1977.”

(3) “Functionally impaired elderly person” means any person 60 years of age or older with physical or mental limitations that restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently.

(4) The “Georgia Medical Assistance Act of 1977” means Article 7 of Chapter 4 of this title.

(5) “Lead agency” means one or more agencies designated by the Department of Community Health to assess services needed by functionally impaired elderly persons, to coordinate and provide community care services to those persons, provide case management, and, where necessary, subcontract with providers of service. A lead agency shall be either a private nonprofit entity or any public entity, including but not limited to any organizational unit of the department.

(6) “Older Americans Act of 1965” means P.L. 92-258, as amended, on July 1, 1982. (Code 1933, § 88-1902D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-61, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2016, p. 737, § 1/HB 1085; Ga. L. 2017, p. 774, § 49/HB 323.)

The 2016 amendment, effective July 1, 2016, deleted former paragraph (1), which read: “‘Aging section’ means the single organizational unit within the Department of Human Services responsible for the planning and administration of services under the Older Americans Act of 1965.”; redesignated former paragraph (2) as present paragraph (1); substituted “Department of Community Health” for “De-

partment of Human Services” in paragraph (1) and in the first sentence of paragraph (5); and added paragraph (2).

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted “the ‘Georgia Medical Assistance Act of 1977.’” for “the Georgia Medical Assistance Act of 1977.” at the end of paragraph (2).

49-6-62. Establishment of community care unit; provision of services; annual service plan; annual progress report; fees and contributions; funding.

(a) The department shall establish a community care unit within the Division of Medical Assistance. The community care unit shall plan and oversee implementation of a system of coordinated community care and support services for the elderly. The community care unit shall develop uniform assessment criteria that shall be used to determine an individual’s functional impairment and to evaluate on a periodic basis the individual’s need for community support services or institutionalized long-term care. The community care unit shall also define each community care service and establish standards for the delivery of community care services. Where appropriate, the community care unit shall utilize existing standards and definitions.

(b) The department shall designate specified geographic service areas which shall be defined in such a way as to ensure the efficient delivery of community care services.

(c) The department shall contract with a lead agency to coordinate and provide community care services within each specified geographic service area.

(d) Each lead agency shall annually submit to the community care unit for approval a service plan evaluating the community care needs of the functionally impaired elderly, identifying priority services and target client groups, and detailing the means by which community care services will be delivered for the service area of that agency. The plan shall also include projected program costs and fees to be charged for services. The lead agency may exclude from the service plan those individuals eligible for benefits under the “Georgia Medical Assistance Act of 1977,” as amended, for whom there is a reasonable expectation that community based services would be more expensive than services the individual would otherwise receive which would have been reimbursable under the “Georgia Medical Assistance Act of 1977,” as amended.

(e) The division shall prepare an annual community care service plan to be incorporated into the State Plan for Medical Assistance, as defined in the “Georgia Medical Assistance Act of 1977.”

(f) The department shall submit on January 1 of each year, beginning in 2017, a progress report on the implementation of the plan required by subsection (e) of this Code section to the Speaker of the House of Representatives, the President of the Senate, the chairperson of the House Committee on Health and Human Services, and the chairperson of the Senate Health and Human Services Committee.

(g) In accordance with rules promulgated by the department, lead agencies may collect fees for community care case management and other services. Such fees shall be established on a sliding scale based upon income and economic need. Fees will not be charged those individuals for the mandatory assessment described in subsection (e) of Code Section 49-6-63. Lead agencies may accept contributions of money or contributions in kind from functionally impaired elderly persons, members of their families, or other interested persons or organizations. Such contributions may not be a condition of services and shall only be used to further the provision of community care services.

(h) Funding for services under this article shall be in addition to and not in lieu of funding for existing community services for the elderly. The department and the lead agency shall ensure that all other funding sources available, including reimbursement under the “Georgia Medical Assistance Act of 1977” and the Older Americans Act of 1965, have been used prior to utilizing state funds for community care for the elderly. (Code 1933, § 88-1903D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-62, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 1992, p. 6, § 49; Ga. L. 2005, p. 48, § 8/HB 309; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-3/HB 228; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2014, p. 866, § 49/SB 340; Ga. L. 2016, p. 737, § 1/HB 1085.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (g).

The 2016 amendment, effective July 1, 2016, substituted “Division of Medical Assistance” for “aging section” at the end of the first sentence of subsection (a); deleted former subsection (e), which read: “The department shall develop a plan which shall provide for the implementation of a community care system in each of the specified geographic service areas by July 1, 1985. The three-year plan shall be

developed concurrent with and integrated into the state plan on aging required under the Older Americans Act of 1965 and shall provide for coordination of all community based services for the elderly. The three-year plan shall include an inventory of existing services and an analysis comparing the cost of institutional long-term care and the cost of community care and other community based services for the elderly. The multiyear plan shall be presented to the Board of Human Services no later than July 31, 1983.”; redesignated former subsection (f) as present subsec-

tion (e); substituted the present provisions of subsection (e) for the former provisions, which read: "At the end of the three-year implementation period an annual community care service plan shall be incorporated into the state plan on aging."; redesignated former subsection (g) as present subsection (f); in subsection (f), substituted "2017" for "1984" near the begin-

ning, substituted "President of the Senate, the chairperson" for "Senate Committee on Assignments, the chairman" in the middle, and substituted "chairperson" for "chairman" near the end; and redesignated former subsections (h) and (i) as present subsections (g) and (h), respectively.

49-6-63. Establishment by lead agency of community care service system; certification for benefits; evaluation by assessment team; volunteers; insurance coverage.

(a) Each lead agency shall be responsible for the establishment of a community care service system which shall have as its primary purpose the prevention of unnecessary institutionalization of functionally impaired elderly persons through the provision of community based services. Each community care service system shall provide no fewer than six of the services listed in subsection (c) of this Code section, four of which shall include case management, assessment of functional impairment and needed community services, homemaker, and home health care services. Case management services shall be provided to each community care service recipient to ensure that arrangements are made for appropriate services. If independent living is no longer possible for a functionally impaired elderly person, the case manager shall assist the person in locating the most appropriate, least restrictive, and most cost beneficial alternative living arrangement.

(b) All existing community resources available to the functionally impaired elderly person shall be coordinated into the community care service system to provide a continuum of care to such persons. The lead agency shall establish agreements, policies, and procedures for service integration and referral mechanisms with such programs.

(c) Services to be coordinated by the lead agency shall include, without being limited to, the following:

- (1) Case management;
- (2) Assessment of functional impairment and needed community services;
- (3) Homemaker services;
- (4) Home health care services;
- (5) In-home personal care services;
- (6) Adult day health services;
- (7) Adult day care;

- (8) Habilitation services;
- (9) Respite care;
- (10) Older Americans Act services, including transportation, nutritional, social, and other services;
- (11) Title XX services;
- (12) Senior center services;
- (13) Protective services;
- (14) Financial assistance services, including, but not limited to, food stamps, Medicaid, medicare, and Supplemental Security Income;
- (15) Health maintenance services; and
- (16) Other community services.

(d) Priority in provision of community care services shall be given to those individuals who have been certified for skilled or intermediate institutional nursing care service benefits conferred by the "Georgia Medical Assistance Act of 1977" and who need home and community based services in order to avoid institutionalization. Services may be provided to other functionally impaired persons as resources allow, as determined by the department. Priority in provision of community care services to such other persons shall be based on economic, social, and medical needs.

(e) All individuals seeking certification for benefits conferred by the "Georgia Medical Assistance Act of 1977," as amended, to be used to pay the cost of placement in a long-term care facility or individuals who would be eligible for such benefits within 180 days of nursing home admission, shall, as a precondition to such certification, undergo evaluation by an assessment team designated by the lead agency to determine if institutionalization can be avoided by provision of more cost-effective community based services. If the individual being evaluated requires community based services which, over a 12 month period, would cost more than the cost of care in a long-term care facility, then such community based services shall not be deemed cost effective. Such cost-effective determination shall apply to each case management evaluation. The assessment team shall, at a minimum, consist of a physician, a registered nurse, and a social worker. Whenever possible, the assessment team shall be responsible for the precertification for nursing home placement and determination of the appropriate level of care, as required by the State Plan for Medical Assistance, as defined in the "Georgia Medical Assistance Act of 1977."

(f) The decision of the assessment team shall be forwarded to the department designated in the State Plan for Medical Assistance, as

defined in the “Georgia Medical Assistance Act of 1977,” as responsible for the certification of benefits for individuals. If the assessment team and the case manager have determined that an individual could be better and more cost effectively served in the community, the department shall not certify such individual for skilled or intermediate institutional nursing care service benefits until the lead agency has informed such individual of the availability of community based services within the lead agency’s geographic service area and of the right of such individual to choose to receive those services as an alternative to placement in a long-term care facility. Such individual shall advise the lead agency of his or her choice of service alternatives. If such individual is otherwise eligible for those benefits for which certification is sought, the department shall certify the individual either for placement in a long-term care facility or for receiving community based services, as the individual advised the lead agency. The evaluation and certification shall be completed in a timely manner.

(g) The lead agency shall seek to utilize volunteers to provide community services for functionally impaired elderly persons. The department may provide appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments in the community care service system. Coverage may also include excess automobile liability protection. (Code 1933, § 88-1904D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-63, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2016, p. 737, § 1/HB 1085.)

The 2016 amendment, effective July 1, 2016, substituted “shall be based” for “will be based” near the end of subsection (d); substituted “such certification” for “that certification” in the middle of the first sentence of subsection (e); and, in subsection (f), substituted “such individual” for “that individual” throughout, substituted “department” for “agency” near the middle of the first sentence, substi-

tuted “the department” for “said agency” near the middle of the second sentence, in the third sentence, substituted “Such individual” for “That individual” at the beginning, and substituted “his or her” for “that individual’s” near the middle, and substituted “the department” for “the agency responsible for certification of benefits” near the middle of the fourth sentence.

ARTICLE 7

LICENSURE OF ADULT DAY CENTER

49-6-86. Reasonable fees for licensure of adult day centers; use of fees.

The department shall be authorized to charge reasonable application fees, license fees, renewal fees, or other similar fees relating to the licensure of adult day centers in an amount established by the board pursuant to rules and regulations. The board shall take into consider-

ation input from consumers, providers of adult day health services, and advocates during the rule-making process to establish such fees. If so appropriated by the General Assembly, the fees shall be used to support the licensing, inspecting, and monitoring of adult day centers. Fees may be refunded by the department for good cause, as determined by the department. (Code 1981, § 49-6-86, enacted by Ga. L. 2007, p. 348, § 2/HB 505; Ga. L. 2016, p. 864, § 49/HB 737.)

Effective date. — This Code section became effective July 1, 2014.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modern-

ize, and correct the Code, substituted “rule-making” for “rulemaking” in the second sentence.

ARTICLE 8

ALZHEIMER’S AND RELATED DEMENTIAS STATE PLAN

Effective date. — This article became effective July 1, 2018.

Cross references. — Protection of elder persons, § 16-5-100. Protection of disabled adults and elder persons, T. 30, C. 5. Alzheimer’s Disease Registry, § 31-2A-17. Disclosure of treatment of Alzheimer’s

disease or Alzheimer’s related dementia, § 31-8-180 et seq.

Editor’s notes. — Ga. L. 2018, p. 921, § 1/SB 444, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Senator Thorborn “Ross” Tolleson, Jr., Act.’”

49-6-90. Mobilization for state response to Alzheimer’s and dementia patients; intent.

The General Assembly having declared that Alzheimer’s disease and related dementias is a looming state and national public health crisis and having found that it is in the best interest of the state and its citizenry to address this issue created a Georgia Alzheimer’s and Related Dementias State Plan for the purpose of developing a strategy to mobilize a state response. The provisions of this chapter are enacted to further the intention of the State of Georgia to become a more dementia-friendly and dementia-capable environment for the citizens of Georgia with Alzheimer’s disease and related dementias. To further that purpose, the Georgia Alzheimer’s and Related Dementias State Plan Advisory Council is created to ensure that focus remains on implementing and amending as needed the goals set forth in the Georgia Alzheimer’s and Related Dementias State Plan. (Code 1981, § 49-6-90, enacted by Ga. L. 2018, p. 921, § 2/SB 444.)

49-6-91. Definitions.

As used in this article, the term:

(1) “Advisory council” means the Georgia Alzheimer’s and Related Dementias State Plan Advisory Council as created and authorized by this article.

(2) “Alzheimer’s” means having characteristics of Alzheimer’s disease, a progressive and degenerative brain disease that causes impairment or change in memory, thinking, or behavior.

(3) “Commissioner” means the commissioner of human services.

(4) “Dementia” means any disease from a class of degenerative brain disorders that cause impairment or changes in memory, thinking, or behavior that are progressive and irreversible. Such diseases include, but are not limited to, Alzheimer’s disease, Lewy Body dementia, frontotemporal dementia, and vascular dementia.

(5) “Department” means the Department of Human Services.

(6) “State plan” means the Georgia Alzheimer’s and Related Dementias State Plan, as amended, created pursuant to legislation for the purpose of analyzing state demographics, prevalent statistics, and existing resources to gauge the state’s capacity to meet growing needs and to present a roadmap for creating a more dementia-capable Georgia. (Code 1981, § 49-6-91, enacted by Ga. L. 2018, p. 921, § 2/SB 444.)

49-6-92. Establishment of advisory council; membership; advisory nature; review and recommendations; operation of council; reporting.

(a) There is established the Georgia Alzheimer’s and Related Dementias State Plan Advisory Council which shall consist of the following members:

(1) Eleven individuals are standing members due to their position in government agency, organization, or elected office:

(A) The commissioner of human services or his or her designee;

(B) The director of the Division of Aging Services;

(C) The President of the Georgia Association of Area Agencies on Aging or his or her designee;

(D) The commissioner of community health or his or her designee;

(E) The commissioner of public health or his or her designee;

(F) The commissioner of behavioral health and developmental disabilities or his or her designee;

(G) The chairperson of the Senate Health and Human Services Committee or his or her designee;

(H) The chairperson of the House Committee on Health and Human Services or his or her designee;

(I) The chairperson of the House Committee on Human Relations and Aging or his or her designee;

(J) A representative of the Georgia Chapter of the Alzheimer's Association; and

(K) A representative of the Georgia Council on Aging.

(2) The Governor shall appoint one individual from around the state in each topical area below, chosen for his or her expertise or experience in one of the following six specific fields:

(A) A provider of residential, health care, or personal care services to those living with dementia;

(B) A social gerontologist or clinical researcher in an education or clinical setting with expertise in dementia;

(C) An advocate with a not-for-profit or state agency whose role is to improve services for older adults or those living with dementia;

(D) A medical professional with an active practice specializing in geriatrics, neurology, or other field closely related to dementia;

(E) A caregiver, current or past, for a family member with dementia who has experience navigating health care service options; and

(F) A person who has been diagnosed with dementia.

(b) The advisory council shall serve in an advisory capacity to the Governor, the General Assembly, the Department of Human Services, and all other state agencies on matters relating to the Georgia Alzheimer's and Related Dementias State Plan. The advisory council shall review and make recommendations regarding progress toward the goals of the state plan and on progress in implementing resources and services to serve individuals with dementia related diseases around Georgia in the future. Such review and recommendations shall include, but not be limited to, the following:

(1) Selecting current priorities for state plan work groups to focus on;

(2) Examining the current laws, rules and regulations, and policies of the various agencies that interact with services for individuals with dementia and making recommendations to improve the navigation of and provision of care services for those with dementia and their caregivers;

(3) Proposing legislative or administrative changes to policies and programs needed for furtherance of the state plan;

(4) Examining state and federal funding into the areas of the state plan and reviewing how to work interdisciplinarily to ensure the most efficient and effective use of available resources;

(5) Locating and assisting departments or partner agencies in applying for new funding sources and new opportunities in furtherance of the goals of the state plan; and

(6) Amending the state plan at least every three years and submitting the amended state plan to the Governor for authorization.

(c) The advisory council shall annually elect a chairperson and vice chairperson from among its membership. The advisory council may elect such other officers and establish committees as it considers appropriate. Until a chairperson and vice chairperson are elected or if the chairperson or vice chairperson is unavailable, the director of the Division of Aging Services shall serve temporarily in that role until a new election can be held by the advisory council. The advisory council shall create and vote on bylaws and policies as needed.

(d) The terms of those individuals appointed by the Governor pursuant to paragraph (2) of subsection (a) of this Code section shall serve for an appointment of two years, with the exception of the first year of existence of the advisory council. For the purpose of staggering term appointments, in the first appointment of the individuals in paragraph (2) of subsection (a) of this Code section, the Governor shall appoint three appointees for a one-year first term and three appointees for a two-year first term. All subsequent appointments or reappointments shall be for terms of two years. If an appointee resigns or is otherwise unable to complete the appointed term, the Governor shall appoint a new individual whose expertise or experience satisfies the vacated position within 90 days.

(e) The advisory council shall meet at least quarterly and at such additional times as it shall determine necessary to perform its duties. The advisory council shall also meet on the call of the chairperson, the vice chairperson, the commissioner, or the Governor. All meetings shall contain updates from each work group and presentations on any developed proposals for furtherance of the state plan goals. At or before the summer quarterly meeting, the advisory council shall take a formal vote on any proposals or recommendations under consideration.

(f) Starting on January 1, 2019, and repeating every three years after that date, the advisory council shall submit to the Governor for his or her approval and thereafter make available to the General Assembly a report on the work of the advisory council. This report shall include a summary of the progress report toward implementation of the state plan and recommendations for amendments to the state plan. If the advisory council determines that amendments need to be made to the state plan, an amended Georgia Alzheimer's and Related Dementia State Plan may be presented to the Governor for review and approval.

(g) The department shall staff a position for the Georgia Alzheimer's and Related Dementias State Plan; such position shall be the state plan coordinator. The state plan coordinator shall assist the chairperson and advisory council on council related activities, coordinating the advisory council meetings, and coordinating and serving as a liaison between the work groups and the advisory council, and other associated duties as assigned by the department. The state plan coordinator shall ensure that the progress report is published pursuant to subsection (f) of this Code section.

(h) The advisory council members shall serve in one or more of the Georgia Alzheimer's and Related Dementias State Plan work groups as described in the goals of the state plan. These work groups are to be composed of volunteers and individuals interested in dementia and shall meet between the quarterly meetings to develop the priorities from paragraph (1) of subsection (b) of this Code section to present recommendations to the full advisory council at its quarterly meetings.

(i) Members shall serve without compensation, although each member of the advisory council shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the advisory council; provided, however, that any legislative member shall receive the allowances authorized by law for legislative members of interim legislative committees and any members who are state employees shall be reimbursed for expenses incurred by them in the same manner as they are reimbursed for expenses in their capacities as state employees. (Code 1981, § 49-6-92, enacted by Ga. L. 2018, p. 921, § 2/SB 444.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "January 1, 2019," was substituted for "January 1 of

the year after this article takes effect" at the beginning of subsection (f).

CHAPTER 9

TRANSFER OF DIVISION OF REHABILITATION SERVICES TO DEPARTMENT OF LABOR

Article 1		Sec.	
General Provisions		49-9-51.	Creation of Employment First Georgia Council; membership; operation.
Sec. 49-9-4.	Creation of Georgia Vocational Rehabilitation Agency; function.	49-9-52.	Purpose of council; "Employment First Policy" or "Employment First."
Article 3		49-9-53.	Powers, duties, and responsibilities of council.
Employment First Georgia Council			
49-9-50.	Definitions.		

ARTICLE 1

GENERAL PROVISIONS

49-9-4. Creation of Georgia Vocational Rehabilitation Agency; function.

(a)(1) The Georgia Vocational Rehabilitation Agency is created and established to perform the functions and assume the duties, powers, and authority exercised on June 30, 2012, by the Division of Rehabilitation Services within the Department of Labor including the disability adjudication section, and such division shall be reconstituted as the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(2) The Georgia Vocational Rehabilitation Agency shall be assigned to the Department of Human Services for administrative purposes only, as prescribed in Code Section 50-4-3.

(3) On and after July 1, 2012, the powers, functions, duties, programs, institutions, and authority of the Georgia Vocational Rehabilitation Agency relating to the former Division of Rehabilitation Services within the Department of Labor shall be performed and exercised by the Georgia Vocational Rehabilitation Agency pursuant to this article. The Georgia Vocational Rehabilitation Agency shall take all necessary steps to ensure continuity of services for the vocational rehabilitation of persons with disabilities during such transfer.

(b) The agency shall be administered by a director appointed pursuant to Code Section 49-9-3. The policy-making functions which were vested in the Department of Labor pertaining to the Division of

Rehabilitation Services are vested in the Georgia Vocational Rehabilitation Agency effective July 1, 2012.

(c) Any proceedings or other matters pending before the Division of Rehabilitation Services of the Department of Labor on June 30, 2012, which relate to the functions transferred to the Georgia Vocational Rehabilitation Agency shall be transferred to the agency on July 1, 2012.

(d) The Georgia Vocational Rehabilitation Agency shall, from July 1, 2012, assume possession and control of all records, papers, equipment, supplies, office space, and all other tangible property possessed and controlled by the Department of Labor as of June 30, 2012, in the Department of Labor's administration of the Division of Rehabilitation Services. All funds attributable to the Division of Rehabilitation Services and its programs and institutions from state, federal, and any other public or private source shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012.

(e) On July 1, 2012, the Georgia Vocational Rehabilitation Agency shall receive custody of any state owned real property in the custody of the Department of Labor on June 30, 2012, which pertains to the functions transferred from the Division of Rehabilitation Services to the Georgia Vocational Rehabilitation Agency.

(f) Prior to July 1, 2012, the Office of Planning and Budget shall calculate, in consultation with the Department of Labor, the amount of all funds of or attributable to the Division of Rehabilitation Services and its programs and institutions from any source that are used to provide administrative or other services within the Department of Labor, including funds from the disability adjudication section, the cost allocation system, and any indirect costs funding from the federal government or any other source. The amount calculated shall be transferred to the agency on July 1, 2012.

(g) All officers, employees, and agents of the Division of Rehabilitation Services who, on June 30, 2012, are engaged in the performance of a function or duty which shall be vested in the Georgia Vocational Rehabilitation Agency on July 1, 2012, by this chapter, shall be automatically transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. An equivalent number of positions or funds of the Department of Labor which provide administrative support to the Division of Rehabilitation Services shall be transferred to the Georgia Vocational Rehabilitation Agency on July 1, 2012. Such persons shall be subject to the employment practices and policies of the Georgia Vocational Rehabilitation Agency on and after July 1, 2012, but consistent with the compensation and benefits of other employees of that department holding positions substantially the same as the transferred

employees; the compensation and benefits of such transferred employees shall not be reduced. Employees who are subject to the rules of the State Personnel Board and who are transferred to the Georgia Vocational Rehabilitation Agency shall retain all existing rights under such rules. Accrued annual and sick leave shall be retained by said employees as employees of the Georgia Vocational Rehabilitation Agency. The Department of Labor shall be responsible for payment of the accrued Fair Labor Standards Act compensatory time possessed by said employees. Such accrued compensatory time shall be used by or paid to said employees prior to July 1, 2012.

(h)(1) The Georgia Vocational Rehabilitation Agency is the designated state unit for the vocational rehabilitation program.

(2) The Georgia Vocational Rehabilitation Agency shall conform to federal standards in all respects necessary for receiving federal grants and the director of the Georgia Vocational Rehabilitation Agency is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(3) The Georgia Vocational Rehabilitation Agency shall take all necessary steps to secure at a minimum the same level of benefits provided pursuant to relevant federal statutes and appropriations received by the Division of Rehabilitation Services of the Department of Labor prior to June 30, 2012. The department shall also amend the state plan if necessary to meet federal funding requirements.

(4) The Georgia Vocational Rehabilitation Agency is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the agency under this chapter. The agency is also authorized to contract for such professional services as may be necessary.

(5) Classified employees of the Georgia Vocational Rehabilitation Agency under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(i) The Georgia Vocational Rehabilitation Agency shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Labor which are in effect on June 30, 2012, and which relate to the functions of the Division of Rehabilitation Services. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(j) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into

before July 1, 2012, by the Department of Labor or the Division of Rehabilitation Services pertaining to the Division of Rehabilitation Services transferred to the Georgia Vocational Rehabilitation Agency by this chapter shall continue to exist; and none of these rights, privileges, entitlements, obligations, and duties are impaired or diminished by reason of the transfer of the functions to the Georgia Vocational Rehabilitation Agency. In all such instances, the Georgia Vocational Rehabilitation Agency shall be substituted for the Department of Labor or the Division of Rehabilitation Services, and the Georgia Vocational Rehabilitation Agency shall succeed to the rights, privileges, entitlements, and duties under such contracts, leases, agreements, and other transactions.

(k) The Georgia Vocational Rehabilitation Agency shall conform all service delivery regions to the state service delivery regions provided in subsection (a) of Code Section 50-4-7.

(l) The duties, powers, and authority to manage and operate the long-term acute care and the inpatient rehabilitation hospitals at the Roosevelt Warm Springs Institute for Rehabilitation shall be transferred to the Board of Regents of the University System of Georgia effective July 1, 2015, and the remaining duties, powers, and authority to manage and operate the Roosevelt Warm Springs Institute for Rehabilitation shall remain vested with the Georgia Vocational Rehabilitation Agency. (Code 1981, § 34-15-2, enacted by Ga. L. 2000, p. 1137, § 1; Ga. L. 2009, p. 453, § 2-17/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Code 1981, § 49-9-4, as redesignated by Ga. L. 2012, p. 303, § 1/HB 1146; Ga. L. 2012, p. 446, § 2-45/HB 642; Ga. L. 2013, p. 141, § 49/HB 79; Ga. L. 2015, p. 890, § 12/HB 263.)

The 2015 amendment, effective July 1, 2015, deleted “and the Roosevelt Warm Springs Institute for Rehabilitation” fol-

lowing “disability adjudication section” in paragraph (a)(1); and added subsection (l).

ARTICLE 3

EMPLOYMENT FIRST GEORGIA COUNCIL

Effective date. — This article became effective July 1, 2018.

Editor’s notes. — Ga. L. 2018, p. 766, § 1/HB 831, not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Georgia’s Employment First Act.’”

Ga. L. 2018, p. 766, § 2/HB 831, not codified by the General Assembly, pro-

vides: “The General Assembly finds and declares that competitive integrated employment, including self-employment, in the general workforce is the first and preferred option in the provision of publicly funded services for all working age citizens with disabilities, regardless of the level of disability.”

49-9-50. Definitions.

As used in this article, the term:

(1) “Competitive integrated employment” means work, including self-employment, in the labor market performed on a full-time or part-time basis in a setting in which an individual with a disability interacts with individuals without disabilities in all aspects of the job function and for which such individual with a disability is compensated at or above the level of salary and benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(2) “Council” means the Employment First Georgia Council established pursuant to Code Section 49-9-51.

(3) “Disability” means a permanent physical, cognitive, or behavioral condition that significantly limits one or more functions of daily living. (Code 1981, § 49-9-50, enacted by Ga. L. 2018, p. 766, § 3/HB 831.)

49-9-51. Creation of Employment First Georgia Council; membership; operation.

(a) There is created the Employment First Georgia Council. The council shall be assigned to the Department of Human Services for administrative purposes only, as defined by Code Section 50-4-3; provided, however, that the Georgia Vocational Rehabilitation Agency shall provide staff and administrative and clerical functions for the council.

(b) The Employment First Georgia Council shall be composed of 14 members as follows:

(1) The executive director of the Georgia Vocational Rehabilitation Agency or his or her designee, who shall serve as chairperson of the council;

(2) The commissioner of the Department of Behavioral Health and Developmental Disabilities or his or her designee;

(3) The Commissioner of Labor or his or her designee;

(4) The commissioner of the Technical College System of Georgia or his or her designee;

(5) The Chancellor of the Board of Regents of the University System of Georgia or his or her designee;

(6) The State School Superintendent or his or her designee;

(7) The executive director of the Georgia Council for Developmental Disabilities or his or her designee;

(8) A representative of an association or other organization of community rehabilitation providers that assist individuals with disabilities in overcoming barriers to employment;

(9) A representative of an association or other organization that provides supported employment and nonemployment day services to individuals with disabilities;

(10) A representative from the business community;

(11) An individual with an intellectual or developmental disability;

(12) An individual with a physical disability;

(13) An individual from the mental health community; and

(14) A family member of an individual with a disability.

(c) The members of the council in paragraphs (8) through (14) of subsection (b) of this Code section shall be residents of this state. Such members shall be appointed by the Governor and serve for a term of three years or until his or her successor is appointed and qualified.

(d) If there is a vacancy on the council, such position shall be filled in the same manner as the original appointment.

(e) The council shall annually elect from its membership a vice chairperson and such other officers as it deems appropriate. A majority of the members shall constitute a quorum at any meeting held by the council. The chairperson shall vote only to break a tie.

(f) The council may conduct meetings at such places and times as it deems necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this chapter. The council shall hold meetings at the call of the chairperson, the executive director of the Georgia Vocational Rehabilitation Agency, or upon written request of a majority of the members. The council shall meet no less than four times each year.

(g) Each member of the board shall be entitled to receive the compensation and allowances provided for in Code Section 28-1-8. Members of the council who are state officials or state employees shall receive no compensation for their services on the council, but may be reimbursed for expenses they incur in the performance of their duties as members of the council in the same manner as they are reimbursed for expenses in their capacities as state officials or employees.

(h) The chairperson may designate and appoint committees from among the membership of the council and may appoint nonmembers of

the council to advisory committees to advise the council on the fulfillment of its duties. The members of the advisory committees shall not receive any per diem or reimbursements; provided, however, that such members shall be entitled to receive the mileage allowance provided for in Code Section 50-19-7 for the use of a personal car in connection with attendance at meetings called by the council.

(i) The Georgia Vocational Rehabilitation Agency, with the concurrence of the council, shall have the authority to employ such administrative staff, consultants, subject matter experts, economists, budget analysts, data analysts, statisticians, and other individuals or organizations deemed appropriate and necessary to carry out the functions of the council within the limits of the appropriations made to the council. (Code 1981, § 49-9-51, enacted by Ga. L. 2018, p. 766, § 3/HB 831.)

49-9-52. Purpose of council; “Employment First Policy” or “Employment First.”

The purpose of the Employment First Georgia Council shall be to advise the Governor, General Assembly, and state agencies as to the adoption and integration of a policy that recognizes that competitive integrated employment, including self-employment, is the first and preferred option of all state funded services provided to working age individuals with disabilities. Such policy shall be known as the “Employment First Policy” or “Employment First.” (Code 1981, § 49-9-52, enacted by Ga. L. 2018, p. 766, § 3/HB 831.)

49-9-53. Powers, duties, and responsibilities of council.

The council shall have the following powers, duties, and responsibilities to:

- (1) Develop an Employment First training plan for providers of services to individuals with disabilities;
- (2) Coordinate and conduct with other state, federal, and private entities, as appropriate, educational activities to increase awareness of the Employment First Policy;
- (3) Evaluate the funding mechanism for services in the state for individuals with disabilities and for students attending inclusive postsecondary institutions;
- (4) Review and make recommendations in a biannual report to the Governor and the General Assembly with regard to issues and necessary steps surrounding the adoption and implementation of the Employment First Policy, including, but not limited to, the following:

(A) Proposed legislative or administrative changes to policies and programs that are integral to the full implementations of the Employment First Policy;

(B) Proposed changes to or creation of funding mechanisms and other initiatives for services in the state for individuals with disabilities and for students attending inclusive postsecondary institutions; and

(C) State-wide best practices to ensure that providers of services are facilitating competitive integrated employment in the workforce; and

(5) Carry out any other functions assigned to the council by the Governor or by general law. (Code 1981, § 49-9-53, enacted by Ga. L. 2018, p. 766, § 3/HB 831.)

TITLE 50
STATE GOVERNMENT
VOLUME 38

Chap.

- 3. State Flag, Seal, and Other Symbols, 50-3-1 through 50-3-100.
- 5. Department of Administrative Services, 50-5-1 through 50-5-202.
- 5B. State Accounting Office, 50-5B-1 through 50-5B-24.
- 5C. Partnership for Public Facilities and Infrastructure, 50-5C-1 through 50-5C-10.
- 7. Department of Economic Development, 50-7-1 through 50-7-125.
- 8. Department of Community Affairs, 50-8-1 through 50-8-301.
- 9. Georgia Building Authority, 50-9-1 through 50-9-111.
- 12. Commissions and Other Agencies, 50-12-1 through 50-12-147.

VOLUME 38A

- 13. Administrative Procedure, 50-13-1 through 50-13-44.
- 13A. Tax Tribunals, 50-13A-1 through 50-13A-20.
- 16. Public Property, 50-16-1 through 50-16-183.
- 17. State Debt, Investment, and Depositories, 50-17-1 through 50-17-105.
- 18. State Printing and Documents, 50-18-1 through 50-18-135.
- 21. Waiver of Sovereign Immunity as to Actions Ex Contractu; State Tort Claims, 50-21-1 through 50-21-37.
- 23. Environmental Finance Authority, 50-23-1 through 50-23-35.
- 25. Georgia Technology Authority, 50-25-1 through 50-25-16.
- 26. Housing and Finance Authority, 50-26-1 through 50-26-22.
- 27. Lottery for Education, 50-27-1 through 50-27-104.

- 29. Information Technology, 50-29-1 through 50-29-12.
- 32. Georgia Regional Transportation Authority, 50-32-1 through 50-32-71.
- 34. OneGeorgia Authority, 50-34-1 through 50-34-18.
- 36. Verification of Lawful Presence Within United States, 50-36-1 through 50-36-4.
- 38. Compact for a Balanced Budget, 50-38-1.
- 39. Atlanta-region Transit Link “ATL” Authority, 50-39-1 through 50-39-61.
- 40. Promotion and Deployment of Broadband Services, 50-40-1 through 50-40-84.

CHAPTER 1

GENERAL PROVISIONS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, the enactment of Article 2 of Chapter 1 of Title 50 by Ga. L. 2014, p. 237, § 1/HB 930, was treated as impliedly repealed and superseded by Ga. L. 2014, p. 815, § 1/SB 206, codified at § 28-6-8, due to irreconcilable conflict.

CHAPTER 2

BOUNDARIES AND JURISDICTION OF THE STATE

ARTICLE 1

STATE BOUNDARIES

50-2-1. Boundaries of the state generally.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of Submerged Lands Act (SLA) of 1953, 43 U.S.C.A. §§ 1301 et seq., 68 A.L.R. Fed. 2d 363.

ARTICLE 2

JURISDICTION

50-2-21. Jurisdiction extends to all persons within state limits; court’s option to decline jurisdiction.

JUDICIAL DECISIONS

Cited in Wegman v. Wegman, 338 Ga. App. 648, 791 S.E.2d 431 (2016).

CHAPTER 3

STATE FLAG, SEAL, AND OTHER SYMBOLS

Article 3		Article 6	
Other State Symbols		Religious Liberty Monument	
Sec.		Sec.	
50-3-86.	Designation as Purple Heart state.	50-3-110.	Monument placement; committee established; use of public funds prohibited.
50-3-87.	Official state mammal.		
50-3-88.	Definitions; adoptable dog designated as the official state dog.		

Article 5

Honoring Reverend Martin Luther King, Jr.

50-3-105. Creation and placement of statue.

ARTICLE 1

STATE AND OTHER FLAGS

50-3-8. Use of national, state, or Confederate flag for advertising, selling, or promoting the sale of merchandise unlawful.

RESEARCH REFERENCES

ALR. — Propriety of prohibition of display or wearing of confederate flag, 66 A.L.R.6th 493.

50-3-9. Abuse of federal, state, or Confederate flag unlawful.**RESEARCH REFERENCES**

ALR. — Propriety of prohibition of display or wearing of confederate flag, 66 A.L.R.6th 493.

50-3-10. Use of flag for decorative or patriotic purposes.**RESEARCH REFERENCES**

ALR. — Propriety of prohibition of display or wearing of confederate flag, 66 A.L.R.6th 493.

ARTICLE 3**OTHER STATE SYMBOLS****50-3-86. Designation as Purple Heart state.**

Georgia is designated as a “Purple Heart State,” honoring our combat wounded veterans for their service and sacrifice in allowing the United States of America to maintain its sovereignty. (Code 1981, § 50-3-86, enacted by Ga. L. 2014, p. 758, § 2/SB 276.)

Effective date. — This Code section became effective July 1, 2014.

Cross references. — Purple Heart Day, § 1-4-21.

50-3-87. Official state mammal.

The white-tailed deer (*Odocoileus virginianus*) is designated as the official Georgia state mammal. (Code 1981, § 50-3-87, enacted by Ga. L. 2015, p. 129, § 1/HB 70.)

Effective date. — This Code section became effective July 1, 2015.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, Code

Section 50-3-87, as enacted by Ga. L. 2016, p. 212, § 2/SB 168, was redesignated as Code Section 50-3-88.

50-3-88. Definitions; adoptable dog designated as the official state dog.

(a) As used in this Code section, the term:

(1) “Adoptable dog” means any dog in the custody of any animal shelter, humane society, or public or private animal refuge that is available for adoption by the general public.

(2) “Animal shelter” shall have the same meaning as set forth in Code Section 4-14-2.

(3) “Humane society” shall have the same meaning as set forth in Code Section 4-14-2.

(4) “Public or private animal refuge” shall have the same meaning as set forth in Code Section 4-14-2.

(b) The adoptable dog is designated as the official Georgia state dog. (Code 1981, § 50-3-88, enacted by Ga. L. 2016, p. 212, § 2/SB 168; Ga. L. 2017, p. 774, § 50/HB 323.)

Effective date. — This Code section became effective July 1, 2016.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted “As used in this Code section, the term:” for “As used in this Code section:” in the introductory language of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, Code Section 50-3-87, as enacted by Ga. L. 2016, p. 212, § 2/SB 168, was redesignated as Code Section 50-3-88.

Editor’s notes. — Ga. L. 2016, p. 212, § 2/SB 168, not codified by the General Assembly, provides that: “The General Assembly finds and declares as follows:

“(1) The National Council on Pet Popu-

lation Study and Policy estimates that a majority of animals taken into shelters are euthanized;

“(2) Thousands of dogs and cats are currently available for adoption in Georgia animal shelters, humane societies, and private rescue groups;

“(3) Responsible pet ownership that includes spay and neuter of dogs and cats not being actively bred by owners will reduce the number of unwanted dogs and cats that are euthanized in Georgia every year;

“(4) The State of Georgia wishes to promote responsible stewardship of dogs and cats; and

“(5) The State of Georgia wishes to promote animal rescue and adoption.”

ARTICLE 5

HONORING REVEREND MARTIN LUTHER KING, JR.

Effective date. — This article became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code

Section 50-3-105 as enacted by Ga. L. 2014, p. 839, § 1/HB 702 was redesignated as Code Section 50-3-110 and Article 5 was redesignated as Article 6.

50-3-105. Creation and placement of statue.

(a) There shall be placed upon the capitol grounds of the state capitol building or in another prominent place a statue of the Reverend Martin Luther King, Jr., subject to the availability of private funds for such purpose.

(b) Unless public safety concerns warrant postponement, such monument shall be procured and placed as soon as practicable but not before the state has been granted any intellectual property license necessary for purposes of this Code section. (Code 1981, § 50-3-105, enacted by Ga. L. 2014, p. 806, § 1/HB 1080.)

ARTICLE 6

RELIGIOUS LIBERTY MONUMENT

Effective date. — This article became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code

Section 50-3-105 as enacted by Ga. L. 2014, p. 839, § 1/HB 702 was redesignated as Code Section 50-3-110 and Article 5 was redesignated as Article 6.

50-3-110. Monument placement; committee established; use of public funds prohibited.

(a) Subject to the availability of funds, there shall be placed within the capitol building or grounds a historic granite monument depicting:

(1) The Preamble to the Georgia Constitution;

(2) The part of the Declaration of Independence which states that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”; and

(3) The Ten Commandments.

(b)(1) Such monument shall be designed, procured, and placed by the Capitol Art Standards Commission, subject to final approval by a monument committee composed of the following members of the General Assembly:

(A) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(B) Two members of the Senate appointed by the Lieutenant Governor; and

(C) One member from each house of the General Assembly appointed by the Governor.

(2) The monument committee established pursuant to this subsection shall stand abolished upon placement of such monument.

(c) No public funds shall be expended for the design or procurement of such monument. Gifts and donations from private individuals, organizations, or foundations shall be accepted and expended by the Capitol Art Standards Commission to carry out the requirements of this Code section. (Code 1981, § 50-3-110, enacted by Ga. L. 2014, p. 839, § 1/HB 702.)

CHAPTER 5

DEPARTMENT OF ADMINISTRATIVE SERVICES

Article 3

State Purchasing

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

Sec.

50-5-63. Green building standards; exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determi-

Sec.

50-5-69. Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

50-5-85. State prohibited from entering into certain contracts without certification that boycott of Israel not to be conducted by other party.

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. Short title.

50-5-121. Definitions.

50-5-122. Legislative intent.

ARTICLE 3

STATE PURCHASING

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

Cross references. — Purchasing procedures for General Assembly, § 28-4-2.

JUDICIAL DECISIONS

General Assembly not subject to this part. — The General Assembly is not subject to procedures for state purchasing under T. 50, C. 5, A. 3, P. 1. *Harrison Co. v. Code Revision Com.*, 244 Ga. 325, 260 S.E.2d 30 (1979).

50-5-63. Green building standards; exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.

(a) As used in this Code section, the term:

(1) “Green building standards” means any system or tool created to rate the environmental efficiency and sustainability of the design, construction, operation, and maintenance of a building.

(2) “State building” means any facility owned, constructed, or acquired by the State of Georgia or any department, board, commission, or agency thereof, including state supported institutions of higher learning.

(b) No contract for the construction of, addition to, or repair or renovation of any facility, the cost of which is borne by this state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, repair, or renovation, and if Georgia forest products are available.

(c) Whenever green building standards are applied to the new construction, operation, repair, or renovation of any state building, the entity applying the standards shall use only those green building standards that give certification credits equally to Georgia forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, the Forest Stewardship Council, or other similar certifying organization approved by such entity.

(d) This Code section shall not apply when in conflict with federal rules and regulations concerning construction. (Ga. L. 1963, p. 552, §§ 1, 2; Ga. L. 2015, p. 265, § 1/HB 255.)

The 2015 amendment, effective July 1, 2015, added subsection (a); redesignated former subsection (a) as present subsection (b); in subsection (b), inserted “or renovation” near the beginning, substituted “this state” for “the state”, and substituted “repair, or renovation” for “or repair” near the end; added subsection (c);

and redesignated former subsection (b) as present subsection (d). See Editor’s notes for applicability.

Editor’s notes. — Ga. L. 2015, p. 265, § 2/HB 255, not codified by the General Assembly, provides, in part, that this Act shall apply to all contracts entered into on or after July 1, 2015.

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.

(a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once

and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed \$100,000.00. When it appears that the use of competitive sealed bidding is either not justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

- (1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not justified or is not advantageous to the state;
- (2) Proposals shall be solicited through a request for proposals;
- (3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;
- (4) A register of proposals shall be prepared and made available for public inspection;
- (5) The request for proposals shall state the relative importance of price and other evaluation factors;
- (6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with qualified offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors' proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b)(1) Except as otherwise provided for in this part, all contracts for the purchase of supplies, materials, equipment, or services made under this part, other than professional and personal employment services or the purchase of new automobiles manufactured by a company that constructs or assembles within this state any light duty motor vehicle with a gross vehicle weight rating of under 12,500 pounds, shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services which shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) As used in this paragraph, the term:

(i) "Commercial use applications" means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines. The term shall not include motor vehicles requiring registration and certificate of title or equipment that is considered consumer goods, as that term is defined in Code Section 11-9-102.

(ii) "Multiple award schedule contract" means a contract that allows multiple vendors to be awarded a state contract for goods or services by providing catalogues of equipment and attachments to eligible purchasers including state agencies, departments, institutions, public school districts, and political subdivisions. Multiple award schedule contract bids shall be evaluated

based upon a variety of factors, including but not limited to discounts, total life costs, service, warranty, machine performance and durability, resale value, product support, and past vendor performance. Multiple award schedule contracts shall allow multiple vendors to bid and be awarded a contract based upon the value of their products and demonstrated results in competitive pricing, product updates, transparency, administrative savings, expedited procurement, and flexibility for state purchasers.

(B) When the commissioner of administrative services determines it to be in the best interest of the state, a multiple award schedule contract may be let for the purchase of equipment used for commercial use applications. All bidders for contracts for the purchase of equipment for commercial use applications shall be required to submit a complete bid package and be the authorized dealer or vendor for a leading manufacturer of equipment used for commercial use applications. Bidders may add additional equipment with a guaranteed minimum discount off the manufacturer's suggested consumer list price in the bid in order to increase the options available to the state.

(C) Nothing in this paragraph shall limit multiple award schedule contracts to commercial use applications.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive,

or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d)(1) Except as otherwise provided for in this part, the Department of Administrative Services shall publish in print or electronically, prior to award or letting of the contracts, notice of its intent to award a contract to the successful bidder or offeror on public display in a conspicuous place in the department's office, on the Georgia Procurement Registry, or both so that it may be easily seen by the public. The public notice on public display shall also state the price or the amount for which the contract may be awarded, the commodities or services to be covered by the contract which may be awarded, and the names of all persons whose bids, offers, or proposals were rejected by the department, together with a statement giving the reasons for the rejection.

(2) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror, be subject to public inspection upon request.

(3) The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish the name of the successful bidder or offeror on public display in a conspicuous place in the department's office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish on public display

the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection.

(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which will become available for public inspection upon request within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to public disclosure.

(5) Records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for this state, shall not be subject to public disclosure until after the department's issuance of its public notice of intent to award a contract to the successful bidder or offeror. Such records include but are not limited to cost estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and records revealing preparation for the procurement.

(6) A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

"I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of

state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror.”

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors’ prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction’s time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than \$100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however, that any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3; Ga. L. 1978, p. 1054, §§ 1, 2; Ga. L. 1979, p. 659, §§ 4, 5; Ga. L. 1980, p. 90, § 2; Ga. L. 1991, p. 1380, § 1; Ga. L. 1996, p. 885, § 5; Ga. L. 1998, p. 1372, § 1; Ga. L. 2001, p. 792, § 1; Ga. L. 2003, p. 605, § 1; Ga. L. 2005, p. 117, § 13/HB 312; Ga. L. 2008, p. 230, §§ 3, 4/SB 175; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 1178, § 1/SB 492; Ga. L. 2012, p. 1350, § 8B/HB 1067; Ga. L. 2015, p. 1284, § 2/HB 259; Ga. L. 2018, p. 1112, § 50/SB 365.)

The 2015 amendment, effective July 1, 2015, in the first sentence of paragraph (b)(1) substituted “purchase” for “purchases” near the beginning, inserted “made under this part,” and substituted “or the purchase of new automobiles manufactured by a company that constructs or assembles within this state any light duty motor vehicle with a gross vehicle weight rating of under 12,500 pounds,” for “made under this part” near the middle.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted “provided, however, that any bids” for “provided, however, any bids” in the proviso of subsection (g).

Editor’s notes. — Ga. L. 2015, p. 1284, §. 1/HB 259, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Act.’”

50-5-69. Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$25,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of the Technical College System of Georgia or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; the commissioner of public health or his or her designee; the commissioner of behavioral health and developmental disabilities or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement cards shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases.

(f) The Division of Family and Children Services of the Department of Human Services may enter into contracts for the purchase of or may purchase placements for children in the care or custody of the Division of Family and Children Services of the Department of Human Services without competitive bidding pursuant to the oversight and authority of the director of the Division of Family and Children Services of the Department of Human Services. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228; Ga. L. 2010, p. 286, § 21/SB 244; Ga. L. 2011, p. 705, § 5-28/HB 214; Ga. L. 2012, p. 760, § 1-1/HB 863; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2015, p. 552, § 18/SB 138; Ga. L. 2015, p. 1284, § 3/HB 259.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, added subsection (f). The second 2015 amendment, effective July 1, 2015, substituted "\$25,000.00" for "\$5,000.00" in the middle of the first sentence of subsection (a). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General

Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Act.'"

Ga. L. 2015, p. 1284, § 7/HB 259, not codified by the General Assembly, provides: "The amendment made by Section 3 of this Act shall apply to Code Section 50-5-69 as it exists on July 1, 2015."

50-5-85. State prohibited from entering into certain contracts without certification that boycott of Israel not to be conducted by other party.

(a) As used in this Code section, the term:

(1) “Boycott of Israel” means engaging in refusals to deal with, terminating business activities with, or other actions that are intended to limit commercial relations with Israel or individuals or companies doing business in Israel or in Israeli-controlled territories, when such actions are taken:

(A) In compliance or adherence to calls for a boycott of Israel other than those boycotts to which 50 U.S.C. App. Section 2407(c), as it existed on January 1, 2016, applies; or

(B) In a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis that is not founded on a valid business reason.

(2) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(b) The state shall not enter into a contract with an individual or company if the contract is related to construction or the provision of services, supplies, or information technology unless the contract includes a written certification that such individual or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

(c) Subsection (b) of this Code section shall not apply to contracts with a total value of less than \$1,000.00. (Code 1981, § 50-5-85, enacted by Ga. L. 2016, p. 262, § 1/SB 327; Ga. L. 2017, p. 774, § 50/HB 323.)

Effective date. — This Code section became effective July 1, 2016.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted “Subsection (b)” for “Subsection (a)” at the beginning of subsection (c).

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. Short title.

This part shall be known and may be cited as “The Small Business Assistance Act of 2015.” (Ga. L. 1975, p. 1619, § 1; Ga. L. 2012, p. 760, § 1-2/HB 863; Ga. L. 2015, p. 1284, § 4/HB 259.)

The 2015 amendment, effective July 1, 2015, substituted “2015” for “2012” at the end of this Code section.

Editor’s notes. — Ga. L. 2015, p. 1284,

§ 1/HB 259, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Act.’”

50-5-121. Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Georgia resident business” means any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to any bid or proposal to the state or a new business that is domiciled in Georgia and which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place from which business is conducted shall not include a post office box, a leased private mailbox, site trailer, or temporary structure.

(3) “Small business” means a business which is independently owned and operated. In addition, such business must have either fewer than 300 employees or less than \$30 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 2012, p. 760, § 1-3/HB 863; Ga. L. 2015, p. 1284, § 5/HB 259.)

The 2015 amendment, effective July 1, 2015, deleted “Georgia resident” preceding “business” near the beginning of paragraph (3).

Editor’s notes. — Ga. L. 2015, p. 1284,

§ 1/HB 259, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Act.’”

50-5-122. Legislative intent.

(a) The legislative intent of this part is declared to be as follows: The most important element of the American economic system of private enterprise is free and vigorous competition. Only through the existence of free and vigorous competition can free entry into business and opportunities for personal initiative and individual achievement be assured. The preservation and expansion of such competition is essential for our economic well-being. In order to encourage such competition, it is the declared policy of the state to ensure that a fair proportion of the total purchases and contracts or subcontracts for property, commodities, and services for the state be placed with Georgia resident businesses and small businesses so long as the commodities and services of small businesses are competitive as to price and quality.

(b) The department shall be authorized to effectuate the legislative intent as set forth in this Code section. (Ga. L. 1975, p. 1619, § 2; Ga. L. 2015, p. 1284, § 6/HB 259; Ga. L. 2016, p. 864, § 50/HB 737.)

The 2015 amendment, effective July 1, 2015, designated the existing provisions as subsection (a); inserted “Georgia resident businesses and” near the middle of the last sentence of subsection (a); and added subsection (b).

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a). See Editor’s notes.

Editor’s notes. — Ga. L. 2015, p. 1284, § 1/HB 259, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Act.’”

Ga. L. 2016, p. 864, § 50/HB 737, which amended this Code section, purported to amend subsection (b), but actually amended subsection (a).

CHAPTER 5B

STATE ACCOUNTING OFFICE

Article 1

General Provisions

Sec.
50-5B-2. Administrative units; directors; employees.

ARTICLE 1

GENERAL PROVISIONS

50-5B-2. Administrative units; directors; employees.

(a) The state accounting officer shall establish such units within the State Accounting Office as he or she deems proper for its administration, including The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys’ Council of the State of Georgia as separate units with distinct accounting functions, and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The state accounting officer shall have the authority, within budgetary limitations, to employ as many persons as he or she deems necessary for the administration of the office and for the discharge of the duties of the office. The state accounting officer shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the office within the limitations of the office’s appropriation, the requirements of

the state system of personnel administration provided for in Chapter 20 of Title 45, and restrictions set forth by law. (Code 1981, § 50-5B-2, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2008, p. 577, § 21/SB 396; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-100/HB 642; Ga. L. 2014, p. 136, § 1-3/HB 291; Ga. L. 2015, p. 325, § 18/HB 246.)

The 2014 amendment, effective July 1, 2014, added present subsection (b) and redesignated former subsection (b) as present subsection (c).

The 2015 amendment, effective July 1, 2015, deleted former subsection (b), which read: “The Georgia State Board of Accountancy shall be a division within the State Accounting Office. The state accounting officer shall appoint an executive

director of the Georgia State Board of Accountancy. Such executive director shall have such powers and duties as provided under Chapter 3 of Title 43.” and redesignated former subsection (c) as present subsection (b).

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

CHAPTER 5C

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE

Sec.	Sec.
50-5C-1. Definitions.	50-5C-6. Termination for default; assumption of responsibilities and duties; eminent domain power not delegated; other powers.
50-5C-2. Authority to develop guidelines.	50-5C-7. Supplemental authority.
50-5C-3. Unsolicited proposals by private entities; requirements.	50-5C-8. No waiver of sovereign immunity.
50-5C-4. Approval of unsolicited proposals; responsibilities of approving public entity; factors for consideration; cancelation of proposal request; loans.	50-5C-9. Authority of law enforcement officers.
50-5C-5. Requirements of comprehensive agreement.	50-5C-10. Exception for compliance with chapter.

Effective date. — This chapter became effective May 5, 2015.

Editor’s notes. — Ga. L. 2015, p. 406, § 1/SB 59, not codified by the General

Assembly, provides: “This Act shall be known and may be cited as the ‘Partnership for Public Facilities and Infrastructure Act.’”

50-5C-1. Definitions.

As used in this chapter, the term:

(1) “Affected local jurisdiction” means any county, municipality, or school district in which all or a portion of a qualifying project is located.

(2) “Comprehensive agreement” means the written agreement between the private entity and the responsible public entity required by Code Section 50-5C-5.

(3) “Develop” or “development” means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

(4) “Person” means an individual, corporation, partnership, trust, association, or other legal entity.

(5) “Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(6) “Public entity” means a department, agency, board, bureau, commission, authority, or instrumentality of the State of Georgia, including the Board of Regents of the University System of Georgia as well as a local government or local authority.

(7) “Qualifying project” means any project submitted by a private entity as an unsolicited proposal in accordance with this chapter and subsequently reviewed and approved by a responsible public entity, within its sole discretion, as meeting a public purpose or public need. This term shall not include and shall have no application to any project involving:

(A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

(B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

(C) Cable and video services pursuant to Chapter 76 of Title 36; or

(D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471, which shall be governed by Article 4 of Chapter 91 of Title 36.

(8) “Responsible public entity” means a public entity that has the power to contract with a private entity to develop an identified qualifying project. For any unsolicited proposal for a project at one or more institutions of the University System of Georgia, the responsible public entity shall be the Board of Regents of the University System of Georgia or its designees. For any unsolicited proposal for a

project for one or more state government entities, other than an institution of the University System of Georgia, the responsible public entity shall be the State Properties Commission.

(9) “Revenue” means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

(10) “Unsolicited proposal” means a written proposal for a qualifying project that is received by a responsible public entity and is not in response to any request for proposal issued by a responsible public entity. (Code 1981, § 50-5C-1, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-2. Authority to develop guidelines.

For any qualifying project undertaken by the State Properties Commission, the Georgia State Financing and Investment Commission shall be solely authorized to develop guidelines for this process. For any qualifying project undertaken by the University System of Georgia, the Board of Regents of the University System of Georgia shall be solely authorized to develop guidelines for this process. (Code 1981, § 50-5C-2, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-3. Unsolicited proposals by private entities; requirements.

(a) Between May 1 and June 30 of each year, a private entity may submit an unsolicited proposal for a project to the responsible public entity for review and determination as a qualifying project in accordance with the guidelines established by Code Section 50-5C-2. Any such unsolicited proposal shall be accompanied by the following material and information:

(1) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;

(2) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(3) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity as well as a proposed schedule for obtaining the permits and approvals required in subparagraph (B) of paragraph (2) of this subsection;

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

(5) A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;

(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

(7) Such additional material and information as the responsible public entity may reasonably request.

(b) For any unsolicited proposal for the development of a project received by a responsible public entity, the private entity shall reimburse the responsible public entity for the actual costs incurred to process, review, and evaluate the unsolicited proposal, including, without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

(c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code section to a responsible public entity shall also notify each affected local jurisdiction by furnishing a copy of its unsolicited proposal to each affected local jurisdiction.

(d) Each affected local jurisdiction that is not a responsible public entity for the respective project may, within 45 days after receiving such notice, submit any comments regarding the unsolicited proposal it may have in writing to the responsible public entity and indicate whether the project is compatible with local plans and budgets. A project shall be consistent with zoning and land use regulations of the responsible public entity and each affected local jurisdiction.

(e) The responsible public entity may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the responsible public entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have no

obligation to return the proposal, unsolicited proposal, or any related materials following such rejection.

(f) A private entity assumes all risks in submission of a proposal or unsolicited proposal in accordance with subsections (a) and (b) of this Code section, and a responsible public entity shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project. (Code 1981, § 50-5C-3, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-4. Approval of unsolicited proposals; responsibilities of approving public entity; factors for consideration; cancellation of proposal request; loans.

(a) The responsible public entity may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 50-5C-3 as a qualifying project. Determination by the responsible public entity of a qualifying project shall not bind the responsible public entity or the private entity to proceed with the qualifying project.

(b) Upon the responsible public entity's determination of a qualifying project as provided in subsection (a) of this Code section, the responsible public entity shall:

(1) Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and

(2) Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) When the time for receiving proposals expires, the responsible public entity shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The responsible public entity shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

(2) The general reputation, industry experience, and financial capacity of the private entity;

(3) The proposed design of the qualifying project;

(4) The eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines;

- (5) Benefits to the public;
- (6) The private entity's compliance with a minority business enterprise participation plan;
- (7) The private entity's plans to employ local contractors and residents; and
- (8) Other criteria that the responsible public entity deems appropriate.

(d) After ranking the proposals, the responsible public entity shall begin negotiations with the first ranked private entity. If the responsible public entity and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the responsible public entity may conduct negotiations with the next ranked private entity. This process shall continue until the responsible public entity either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.

(e) At any time during the process outlined in this Code section but before full execution of a comprehensive agreement, the responsible public entity may, without liability to any private entity or third party, cancel its request for proposals or reject all proposals received in response to its request for proposals, including the unsolicited proposal, for any reason whatsoever.

(f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to any private entity. The responsible public entity shall not loan money to the private entity in order to finance all or a portion of the qualifying project. All power or authority granted by this chapter to public entities shall be in addition to and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this chapter shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a public entity elects to proceed under this chapter. A multiyear lease entered into by the state as lessee under this Code section which is not terminable at the end of each fiscal year during the term of the lease shall be subject to and comply with the provisions of Code Section 50-16-41, specifically including compliance with any multiyear contract value authority adopted by the Georgia State Financing and Investment Commission for each fiscal year. (Code 1981, § 50-5C-4, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-5. Requirements of comprehensive agreement.

(a) The comprehensive agreement entered into between the responsible public entity and the private entity selected in accordance with this chapter shall include:

(1) A thorough description of the duties of each party in the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;

(4) Any reimbursements to be paid to the responsible public entity for services provided by the responsible public entity;

(5) A process for the review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to reasonable standards acceptable to the responsible public entity;

(6) A process for the periodic and final inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;

(7) Delivery of performance and payment bonds in the amounts required in Code Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible public entity for those components of the qualifying project that involve construction, and bonds, letters of credit, or other forms of security acceptable to the responsible public entity for other phases and components of the development of the qualifying project;

(8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the responsible public entity accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

(9) A process for monitoring the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;

(10) The filing of appropriate financial statements to the responsible public entity on a periodic basis; and

(11) Provisions governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity, including provisions compliant with state constitutional limitations on public debt.

(b) The comprehensive agreement may include such other terms and conditions that the responsible public entity determines will serve the public purpose of this chapter and to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity.

(c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the development of phases or segments of the qualifying project. (Code 1981, § 50-5C-5, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-6. Termination for default; assumption of responsibilities and duties; eminent domain power not delegated; other powers.

(a) In the event of a material default by the private entity, the responsible public entity may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 50-5C-5 in accordance with Code Sections 13-10-40 through 13-10-65.

(b) The responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the rights, title, and interest in such qualifying project.

(c) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this chapter. Any responsible public entity having the power of condemnation under state law may exercise such power of

condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

(d) In the event the responsible public entity elects to take over a qualifying project pursuant to subsection (b) of this Code section, the responsible public entity may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof. (Code 1981, § 50-5C-6, enacted by Ga. L. 2015, p. 406, § 3/SB 59; Ga. L. 2017, p. 774, § 50/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised language in subsection (b).

50-5C-7. Supplemental authority.

All power or authority granted by this chapter to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general or special law. The limitations imposed by this chapter shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a public entity elects to proceed under this chapter. (Code 1981, § 50-5C-7, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-8. No waiver of sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or official immunity of any responsible public entity or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. (Code 1981, § 50-5C-8, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-9. Authority of law enforcement officers.

Any law enforcement officers of the public entity shall have the same powers and jurisdiction within the portion of such qualifying project as they have in their respective areas of jurisdiction, and such law enforcement officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction. (Code 1981, § 50-5C-9, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

50-5C-10. Exception for compliance with chapter.

(a) Responsible public entities that proceed with procurement pursuant to competitive sealed bidding pursuant to Code Section 50-5-67,

or any other purchasing options available to them under current law, shall not be required to comply with this chapter.

(b) Nothing in this chapter shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.

(c) Nothing in this chapter shall abrogate the obligations of a responsible public entity or private entity to comply with the public meetings requirement in accordance with Chapter 14 of this title or to disclose public information in accordance with Article 4 of Chapter 18 of this title. (Code 1981, § 50-5C-10, enacted by Ga. L. 2015, p. 406, § 3/SB 59.)

CHAPTER 7

DEPARTMENT OF ECONOMIC DEVELOPMENT

Article 1		Article 9	
General Provisions		Georgia Film and Television Trail	
Sec.		Sec.	
50-7-2.	Commissioner as head of department; appointment and compensation; authority to designate assistant commissioner and other employees; reimbursement of certain expenses.	50-7-110.	Short title.
		50-7-111.	Purpose.
		50-7-112.	“Trail” defined.
50-7-8.	Additional duties and powers of board.	50-7-113.	Duties and responsibilities of Department of Economic Development.
50-7-11.1.	Authority to administer and disperse funds.	50-7-114.	Policies.
50-7-17.	New Georgia Foundation for Tourism; definitions; marketing program.	50-7-115.	Placing of signage.
		50-7-116.	Liability for injury to person or property caused by act or failure to act of other persons using premises.
		50-7-117.	Rules and regulations.
Article 8		Article 10	
State Workforce Development Board		Defense Community Economic Development Fund	
50-7-90 through 50-7-91. [Repealed].		50-7-120 through 50-7-125. [Repealed].	

ARTICLE 1
GENERAL PROVISIONS

50-7-2. Commissioner as head of department; appointment and compensation; authority to designate assistant commissioner and other employees; reimbursement of certain expenses.

(a) There is created the office of commissioner of economic development, who shall be executive office and administrative head of the department. The commissioner shall be appointed by and serve at the pleasure of the Board of Economic Development. The compensation of the commissioner shall be fixed by the board. The commissioner shall assist the board in the performance of its duties, powers, and authority, and jurisdiction as the board shall provide. The commissioner shall receive expenses, including mileage, as do other state officials and employees.

(b) The board is authorized to designate an assistant commissioner, a deputy commissioner to be known as the deputy commissioner for Rural Georgia, and such other employees as are necessary to carry out and effectuate this chapter.

(c) The commissioner is further authorized and empowered to reimburse authorized personnel of the department for the actual cost incurred in the pursuit of official business for all meals, taxis, parking, and the rental of automobiles when the use of such vehicles is less expensive or more efficient than other commercial transportation. (Ga. L. 1959, p. 262, §§ 5, 13; Ga. L. 1962, p. 694, § 6; Ga. L. 1964, p. 181, § 1; Ga. L. 1968, p. 130, § 13; Ga. L. 1968, p. 1411, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 30; Ga. L. 2018, p. 142, § 3/HB 951.)

The 2018 amendment, effective July 1, 2018, designated the existing provisions of this Code section as subsections (a) through (c); and inserted “, a deputy commissioner to be known as the deputy commissioner for Rural Georgia,” in the middle of present subsection (b).

Editor’s notes. — Ga. L. 2018, p. 142, § 1/HB 951, not codified by the General Assembly, provides that: “The General Assembly finds that:

“(1) Since 2010 the State of Georgia has experienced tremendous job growth, adding more than 500,000 new private sector jobs;

“(2) Georgia’s economic successes during this period have resulted from a favorable tax structure and regulatory environ-

ment and aggressive economic development initiatives;

“(3) Georgia has been declared by several industry publications, including *Site Selection Magazine*, to be the best state in the nation for business for the previous four years;

“(4) This economic success has not extended into all of Georgia’s rural areas to a desired level;

“(5) As a result, Georgia’s rural areas face with challenges distinct from other regions of this state, including loss of population, insufficient health care access, poor infrastructure, diminished opportunity for quality education, scarcity of employment opportunities, and overall lack of economic growth;

“(6) A thorough, intensive, and systematic study of the existing issues in Georgia’s rural areas is necessary and appropriate; and

“(7) The objective of such study should be to identify policies and ideas to enhance economic opportunity across the entire state, particularly in rural areas.”

50-7-8. Additional duties and powers of board.

The board shall also have the following duties and powers:

(1) To conduct and make such surveys and investigations, to gather and compile such information, and to make and prepare such reports, plans, and maps as may be necessary or proper effectually to discharge the duties and exercise the powers of the board enumerated in this article;

(2) To engage in and promote and encourage research designed to further new and more extensive uses of the agricultural and natural resources or other products or resources of the state and designed to develop new products and industrial processes;

(3) To study trends and developments in business, industry, and agriculture in the state and analyze such trends and developments and the reasons therefor; to study costs and other factors underlying the successful operation of businesses and industries in the state; and to make recommendations regarding circumstances promoting or hampering industrial or agricultural development;

(4) To collect, compile, and publish in print or electronically periodically a census of business and industry in the state with the cooperation of other agencies, and to analyze and publish in print or electronically information relating to current conditions of business, industry, and agriculture in the state;

(5) To compile, publish in print or electronically, and make available for distribution to interested persons the results of any and all studies, surveys, and investigations; any and all information gathered; and any and all reports made and plans and maps prepared;

(6) To coordinate any of its activities, efforts, or functions with those of any other agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or functions similar to those of the board, and to cooperate, counsel, and advise with such agencies;

(7) To cooperate, counsel, and advise with and to encourage and promote coordination in the efforts of other organizations or groups within the state, public or private, engaged in publicizing the advantages, attractions, or resources of the state;

(8) To cooperate, counsel, and advise with municipal, county, regional, or other local planning agencies in the state for the purpose

of promoting coordination between the state and localities as to plans, policies, development of commerce, industry, or agriculture, publicity, and other related activities and functions;

(9) To solicit and receive gifts, donations, or contributions from any person, firm, or corporation in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board;

(10) To authorize the Department of Economic Development in accordance with all applicable state laws to contract and make cooperative agreements, contracts, and rental agreements with the United States government; any county, municipality, or local government or any combination thereof; any public or private corporation or firm; any persons whatsoever; or any public authority, agency, commission, or institution, including agencies of state government for any of the services, purposes, duties, responsibilities, or functions vested in the board;

(11) To authorize the Department of Economic Development to participate with public and private groups, organizations, and businesses in joint marketing projects that promote the economic and tourist development of the State of Georgia and make efficient use of state appropriated marketing funds. In connection with such projects, the department may receive supplies, materials, equipment, services, and other personal property and intangible benefits. It may also issue licenses to others for the use of property in its custody or control, including intellectual property and other personal property, but may not become a joint owner. In acquisitions under this paragraph, the department shall be exempt from the provisions of Chapters 5 and 25 of this title. By way of illustration and not limitation, the department may allow the use of its logo in advertising and on uniforms provided by cooperating entities for wear by department employees. The board shall adopt and amend its policies, regulations, rules, and procedures as necessary to implement this provision and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act," in doing so. In this paragraph, "marketing" means promotion, advertising, signage, public relations, press relations, branding, and use of a "look"; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood. The department will utilize competitive procedures and the Georgia Registry whenever in its reasonable discretion it is in the best interest of the state to do so. The Georgia Technology Authority will retain its authority over technology but will defer to the department in matters of marketing of economic development and implementation in such overlapping areas as creation of kiosks and web page design and operation. The

Department of Administrative Services will retain its authority over purchasing in areas not peculiarly germane to marketing implementation, such as printing and shipping, but will defer to the department in matters of marketing of economic development and implementation in overlapping areas;

(12) To assist the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in the administration and performance of the Georgia Music Hall of Fame Authority's duties, powers, responsibilities, and functions as provided in Part 10 of Article 7 of Chapter 3 of Title 12;

(13) To enter into contracts with the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in assisting the Georgia Music Hall of Fame Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Music Hall of Fame Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Music Hall of Fame Authority, including the provision for joint or complementary services, within the scope of their respective powers;

(14) To induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform the agency's or authority's statutory functions; and

(15) To promote the deployment of broadband services throughout the state, including, but not limited to, the deployment of broadband services in any facilities and developments designated as a Georgia Broadband Ready Community Site. The board and the Department of Economic Development shall have such additional powers and duties related to the promotion of the deployment of broadband services and other emerging communications technologies provided in Chapter 40 of this title. (Ga. L. 1949, p. 249, § 15; Ga. L. 1959, p. 262, §§ 16-18; Ga. L. 1962, p. 694, § 8; Ga. L. 1985, p. 428, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 684, § 1; Ga. L. 2004, p. 690, § 32; Ga. L. 2005, p. 306, §§ 2, 3/SB 125; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2018, p. 629, § 4-1/SB 402.)

The 2018 amendment, effective May 7, 2018, deleted "and" at the end of paragraph (13); in paragraph (14), substituted "agency's or authority's" for "agency or authority's" near the end, and substituted

"and" for the period at the end; and added paragraph (15).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Chapter 40 of this title" was substituted for "Chap-

ter 39 of this title” at the end of paragraph (15).

Editor’s notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General

Assembly, provides that: “This Act shall be known and may be cited as the ‘Achieving Connectivity Everywhere (ACE) Act.’”

50-7-11.1. Authority to administer and disperse funds.

In the event the board accepts grants and gifts from the federal government pursuant to Code Section 50-7-10, the board shall also have the authority to administer and disperse those funds for any and all purposes of this article in a manner consistent with the terms of the grant or gift and other applicable laws, the provisions of Code Section 50-7-11 notwithstanding. (Code 1981, § 50-7-11.1, enacted by Ga. L. 2013, p. 685, § 2/SB 177; Ga. L. 2015, p. 1084, § 2/HB 348; Ga. L. 2018, p. 109, § 3/SB 377.)

The 2015 amendment, effective July 1, 2015, added the second sentence in this Code section.

The 2018 amendment, effective July 1, 2018, deleted the former second sentence, which read: “Regarding the administration, dispersal, and use of any federal funds, or the administration of programs

created by the Workforce Investment Act or its amendments, the board shall administer, disperse, and use those funds, and administer those programs in compliance with governing federal laws, the state plan, and regulations and policies promulgated by the State Workforce Development Board and the Governor.”

50-7-17. New Georgia Foundation for Tourism; definitions; marketing program.

(a) **Statement of policy and short title.** The General Assembly finds that it is in the state’s interest to present a cohesive and vibrant message for the promotion of tourism in Georgia. This Code section, therefore, shall be known and may be cited as the “New Georgia Foundation for Tourism Act.”

(b) **Definitions.** As used in this Code section, the term:

(1) “Agency” means any officer, board, department, agency, commission, bureau, authority, public corporation, instrumentality, or other entity of state government when engaged in an activity conducive to marketing which promotes tourism.

(2) “Coordinate” and “coordination” include issuing rules, policies, standards, definitions, specifications, coordination, and other guidance and direction.

(3) “Department” means the Department of Economic Development.

(4) “Implement” and “implementation” include planning, writing, drafting, designing, study, and market analysis; solicitation and acceptance of gifts, contributions, and cooperation; contracting, pro-

curement, retention of consultants, outsourcing, similar activities, and other activities within the ordinary meaning of the term in this context.

(5) “Market” and “marketing” include promotion, advertising, signage, public relations, press relations, branding, and use of a “look”; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood.

(c) Establishment of State-wide Tourism Marketing Program.

(1) **Generally.** For promotion of tourism in Georgia, the department may establish, implement, and provide for implementing a State-wide Tourism Marketing Program, with common and consistent features for implementation by the department and agencies. Within the State-wide Tourism Marketing Program, the department may establish or authorize various themes and component programs, but such themes and component programs must have common and consistent features with the State-wide Tourism Market Program.

(2) **Emphases.** As important and substantial components of the State-wide Tourism Marketing Program, the department will place particular emphasis on branding and on the state’s great heritage and culture.

(3) **Sharing of powers.** In marketing and implementation of marketing for tourism, the department may exercise its powers under paragraphs (9) and (11) of Code Section 50-7-8 and may authorize and delegate to agencies all or parts of such powers for their own implementation.

(d) Coordination.

(1) **Generally.** The department will implement the State-wide Tourism Marketing Program and will also coordinate its implementation by individual agencies.

(2) **Delegation and agency retention.** The department may delegate marketing implementation activities to agencies in promotion of tourism and may allow agencies to retain marketing and implementation activities in the course of its coordination. The department will coordinate agencies such that they retain a measure of independence and freedom of action in marketing their own specific activities and functions, consistently with the State-wide Tourism Marketing Program.

(3) **Cooperation.** In addition to the specific administrative instructions of this Code section, the department, the Georgia Technology Authority, the Department of Administrative Services, and agen-

cies and other departments and state authorities will assist and cooperate with one another for the purposes of this Code section.

(4) **Budget.** The department may establish an annual budget covering all the costs of establishing and implementing the State-wide Tourism Marketing Program and determine an equitable basis for prorating all or part of the annual costs among the agencies, subject to approval by the Governor. Upon approval, the Governor may direct that the necessary pro rata share of the agencies assessed be made available for expenditure by the department in the same manner as appropriated funds.

(5) **Exclusion from APA.** Coordination of marketing and implementation of marketing for promotion of tourism will not be subject to the “Georgia Administrative Procedure Act,” Article 1 of Chapter 13 of Title 50.

(6) **Agency publications.** Without limitation, the department may determine when the publication of official reports and similar documents, and the production of similar material in other media (such as film, video, sound, and other electronic forms) are deemed conducive to promoting tourism. Agencies will then publish or produce such material and information using themes, a “look,” and other marketing elements promulgated by the department for the State-wide Tourism Marketing Program.

(e) **Georgia Tourism Foundation.**

(1) **Establishment.** There is hereby established the Georgia Tourism Foundation, existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(A) To solicit and accept contributions of money and in-kind contributions of services and property for the State-wide Tourism Marketing Program;

(B) To make and disburse contributions to the department for such purposes;

(C) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions;

(D) To formulate recommendations for the State-wide Tourism Marketing Program;

(E) Subject to approval of the Governor, to create subsidiaries with like character and powers but with limited missions keyed to particular component programs and activities of the department’s State-wide Tourism Marketing Program; and

(F) To provide for additional officers and governance through bylaws which are consistent with the goals of lessening the government burden in promoting tourism, establishing and maintaining tax exempt status, and soliciting deductible contributions.

(2) **Members.** The governance of the Georgia Tourism Foundation shall be in members, consisting of not less than nine nor more than 20 members, appointed by the Governor. Members shall always include at least three members of the Board of Economic Development, together with such other members as appointed by the Governor. Service by a member of the Board of Economic Development as a member of the Georgia Tourism Foundation shall not constitute a conflict of interest. A member of the Georgia Tourism Foundation who is a member of the Board of Economic Development shall serve as the chairperson of the Georgia Tourism Foundation and shall be elected by the members of the Georgia Tourism Foundation. In no event shall members of the Board of Economic Development comprise more than one-third of the members of the Georgia Tourism Foundation. The Georgia Tourism Foundation shall be authorized to fix the precise number of members, within the minimum and maximum numbers, by resolution adopted from time to time at a meeting of the Georgia Tourism Foundation by a majority of all the members of the Georgia Tourism Foundation. No member shall be individually liable for the acts or omissions to act by the foundation.

(3) **Administration.** The Georgia Tourism Foundation shall be attached to the department for administrative purposes. The Attorney General shall be the attorney for the foundation. The department may solicit and accept contributions from the foundation and authorize agencies to do so. The department may cooperate and contract with the foundation for their mutual benefit and authorize agencies to do so. Upon any dissolution of the foundation, its assets will devolve in trust to the department or its successor for use only for marketing to promote tourism for Georgia.

(4) **Public purpose.** The creation of the Georgia Tourism Foundation and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public and charitable purpose. Further, the foundation will be performing an essential governmental function in the exercise of the powers conferred upon it by this Code section. Accordingly, the foundation shall not be subject to taxation or assessment in any manner, including without limitation taxation or assessment upon any transaction, income, money, or other property or activity. The exemptions granted in this Code section shall not be extended to any private person or entity. (Code 1981, § 50-7-17, enacted by Ga. L. 2005, p. 306, § 1/SB 125; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2013, p. 685, § 1/SB 177; Ga. L. 2014, p. 866, § 50/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “Board of Economic Development” for “Board of Development” in the fourth sentence of paragraph (e)(2).

ARTICLE 8

STATE WORKFORCE DEVELOPMENT BOARD

50-7-90 through 50-7-91.

Reserved. Repealed by Ga. L. 2018, p. 109, § 1/SB 377, effective July 1, 2018.

Editor’s notes. — This article consisted of Code Sections 50-7-90 through 50-7-91, relating to the State Workforce Development Board, and was based on Ga. L. 2015, p. 1084, § 2/HB 348; Ga. L. 2016, p. 864, § 50/HB 737.

ARTICLE 9

GEORGIA FILM AND TELEVISION TRAIL

Effective date. — This article became effective July 1, 2016.

50-7-110. Short title.

This article shall be known and may be cited as the “Georgia Film and Television Trail Act.” (Code 1981, § 50-7-110, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-111. Purpose.

In order to acknowledge the increasing production of films and television in this state, in order to promote the enjoyment and appreciation of the film and television industry in Georgia, and in order to provide public interest and enjoyment in visiting and viewing the location sites of films and television productions made in Georgia, a trail shall be developed to provide an opportunity for the public to be aware of these locations and visit film and television location sites throughout this state. Therefore, the purpose of this article is to provide for a Georgia Film and Television Trail. (Code 1981, § 50-7-111, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-112. “Trail” defined.

As used in this article, the term “trail” means the Georgia Film and Television Trail provided for in this article. (Code 1981, § 50-7-112, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-113. Duties and responsibilities of Department of Economic Development.

The Department of Economic Development shall have the responsibility of creating and developing a Georgia Film and Television Trail. In carrying out such responsibilities, it shall be the duty of the department to identify and plan the trail, to acquire or otherwise gain control over or rights to the use of the necessary land for the signs to identify the locations of certain film and television productions that the department determines are of interest to the general public and to work with the Department of Transportation to design appropriate signs. For the purpose of carrying out its primary duties as provided in this article, the department shall be authorized to exercise any powers heretofore provided by law for the department, except for the powers of eminent domain. (Code 1981, § 50-7-113, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-114. Policies.

The department shall be guided by the following policies in creating and administering the Georgia Film and Television Trail:

- (1) A balanced system of locations throughout the state should be sought;
- (2) Assistance and encouragement should be provided for local governments in the development of the trail;
- (3) The advice, cooperation, and assistance of other state agencies, local governments and agencies thereof, and private associations and organizations should be sought in developing and maintaining the signs;
- (4) The trail should be planned, constructed, and maintained on a long-term basis, and in connection therewith long-term control of the signs and marking of the trail; and
- (5) A program for the publicity and education of the public on the existence of the trail should be established. (Code 1981, § 50-7-114, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-115. Placing of signage.

(a) The Department of Transportation is authorized and directed to place signs in this state at film and television production sites determined by the Department of Economic Development and approved by the Department of Transportation pursuant to this article.

(b) Nothing contained in this Code section shall be deemed or construed to prevent local governing authorities or private associations

and organizations from placing signs or otherwise indicating the location of the film or television production sites in this state, provided that the power of eminent domain shall not be exercised for the acquisition or construction of such signs for film or television production location sites.

(c) Notwithstanding the provisions of any other statute concerning the improvement of land held in fee simple by the State of Georgia, the Department of Transportation shall be authorized to expend state funds, subject to appropriations, for construction, placement, and maintenance of the signs indicating the film or television production locations designated by the department and may through purchase, easement, lease, or donation. (Code 1981, § 50-7-115, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-116. Liability for injury to person or property caused by act or failure to act of other persons using premises.

(a) Any person who goes upon or through the premises, including, but not limited to, lands, waters, and private ways, of another with or without permission to sightsee, or for any other purpose, without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his or her behalf by an agency of the state or federal government, is not thereby entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for or incur liability for any injury to person or property caused by an act or failure to act of other persons using such premises.

(b) Nothing in this Code section shall be construed as affecting the existing case law of Georgia regarding liability of owners or possessors of premises with respect to business invitees in commercial establishments or to invited guests, nor shall this Code section be construed so as to affect the attractive nuisance doctrine. In addition, nothing in this Code section shall excuse the owner or occupant of premises from liability for injury to persons or property caused by the malicious or illegal acts of the owner or occupant. (Code 1981, § 50-7-116, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

50-7-117. Rules and regulations.

The Department of Economic Development is authorized to adopt and promulgate such rules and regulations as may be necessary to carry out this article. (Code 1981, § 50-7-117, enacted by Ga. L. 2016, p. 282, § 2/SB 417.)

ARTICLE 10

DEFENSE COMMUNITY ECONOMIC DEVELOPMENT FUND

50-7-120 through 50-7-125.

Reserved. Repealed by Ga. L. 2018, p. 349, § 2/SB 395, effective July 1, 2018.

Editor's notes. — This article consisted of Code Sections 50-7-120 through 50-7-125, relating to defense community economic development fund, and was based on Ga. L. 2017, p. 432, § 2/HB 470.

Ga. L. 2018, p. 1112, § 54(e)/SB 365, part of an Act to revise, modernize, and correct the Code, effective May 8, 2018, not codified by the General Assembly, provides: “In the event of an irreconcilable

conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2018 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.’ Accordingly, the amendment to Code Section 50-7-122 by Ga. L. 2018, p. 1112, § 50(2)/SB 365, was not given effect.

CHAPTER 8

DEPARTMENT OF COMMUNITY AFFAIRS

Article 1

General Provisions

Sec.

50-8-7.1. General powers and duties.

50-8-18. Energy efficient construction of major state-funded facility projects; short title; legislative findings; “major facility project” defined.

Article 4

Metropolitan Area Planning and Development Commissions

50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.

Article 6

**Office of Rural Development; State
Advisory Committee on Rural
Development**

PART 2

RURAL DEVELOPMENT COUNCIL

50-8-150. Creation of council; members;

Sec.

terms; officers; regular meetings; expenses; bylaws [Repealed].

Article 11

Downtown Renaissance Fund

50-8-260. Definitions.

50-8-261. Short title; establishment; director; application for assistance; fees; rules and regulations.

Article 12

Metropolitan Transportation Planning Process for Atlanta Urbanized Area and Atlanta Air Quality Region

50-8-280. Metropolitan Transportation Planning Process established; determination of regional air quality planning area; participating governmental units; funding; policy boards; conflict of laws.

Article 13	Sec.
Georgia Geospatial Advisory Council	50-8-301. Creation; coordination; meetings; role; regulations.
Sec.	
50-8-300. Definitions.	

ARTICLE 1
GENERAL PROVISIONS

50-8-7.1. General powers and duties.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department, utilizing the comprehensive plans of qualified local governments, shall undertake and carry out such activities as may be necessary to assist the Governor in encouraging, coordinating, developing, and implementing coordinated and comprehensive planning. Such activities may include, but shall not be limited to, the following:

- (1) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Governor in coordinated and comprehensive planning on the state level and throughout the state, including, but not limited to, assistance in the development of a comprehensive plan for the state;
- (2) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Governor in defining the state’s long-term goals, objectives, and priorities and implementing those goals, objectives, and priorities through coordinated and comprehensive planning;
- (3) The department shall examine and analyze plans of state agencies, comprehensive plans of regional commissions, and comprehensive plans of municipalities and counties, undertaken as part of the coordinated and comprehensive planning process, and advise the Governor with respect to those plans; and
- (4) The department shall serve as policy liaison for the Governor, with respect to coordinated and comprehensive planning, with and among state agencies and local governments.

(b) The department shall establish in accordance with the provisions of Code Section 50-8-7.2 minimum standards and procedures for coordinated and comprehensive planning, including standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process. The department shall undertake and carry out such activities as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) As part of such minimum standards and procedures, the department shall establish minimum elements which shall be addressed and included in comprehensive plans of local governments which are prepared as part of the coordinated and comprehensive planning process, provided that such minimum elements shall include the promotion of the deployment of reasonable and cost-effective access to broadband services by broadband services providers. As used in this paragraph, the terms “broadband services” and “broadband services provider” shall have the same meanings as provided in Code Section 50-40-1;

(2) The department shall establish minimum standards and procedures which shall be used by local governments in developing, preparing, and implementing their comprehensive plans. The department shall incorporate the minimum standards and procedures with respect to natural resources, the environment, and vital areas of the state established and administered by the Department of Natural Resources pursuant to Code Section 12-2-8. In establishing such minimum standards and procedures, the department shall be authorized to differentiate among local governments and among regions based upon factors which the department determines merit differentiation, such as total population, density of population, geographic features, the size of tax base, the type and character of services furnished by local governments, the size of budget, and other factors;

(3) The department shall develop planning procedures with respect to regionally important resources, for planning with respect to developments of regional impact, and for encouraging interjurisdictional cooperation among local governments. The department shall determine, in its judgment and for each region, what shall constitute developments of regional impact. Such determinations by the department shall be made for each region after receiving any necessary information from the regional commission for the region, from local governments within the region, and from others within the region. The department’s determinations shall be publicly promulgated, using such means as the commissioner may determine, so that all local governments within a region will receive notice of the department’s determinations affecting that region; and

(4) The department shall establish and shall promulgate procedures for obtaining input from, and participation by, local governments and the public in establishing, amending, and updating from time to time the minimum standards and procedures.

(c) The department shall undertake and carry out such activities as the board or the commissioner may deem necessary for supervising regional commissions and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department shall recommend to the board from time to time the boundaries for the regions for each of the regional commissions; and

(2) The department shall review and comment on comprehensive plans prepared by, and coordinated and comprehensive planning activities undertaken by or under the direction of, regional commissions.

(d) The department shall undertake and carry out such activities as may be necessary to mediate, or otherwise assist in resolving, conflicts. Such activities may include, but shall not be limited to, the following:

(1) The department may establish such procedures and guidelines for mediation or other forms of resolving conflicts as the commissioner may deem necessary. The procedures and guidelines shall specify the times within which steps in the mediation or other form of conflict resolution shall take place and shall provide that such times shall not exceed, in the aggregate, 90 days from the date on which mediation or other conflict resolution begins. The department shall promulgate and make public all such procedures and guidelines;

(2) The department may act to mediate or otherwise assist in resolving conflicts upon written request from any regional commission or local government or may act, without any such request, on its own initiative;

(3) The department may establish rules and procedures which require that local governments submit for review any proposed action which would, based upon guidelines which the department may establish, affect regionally important resources or further any development of regional impact. Any such proposed action by a local government (other than a regional commission) shall be submitted for review to the local government's regional commission. A report shall be prepared and submitted to the regional commission council, including potential impacts of the proposed development of regional impact. The report shall be made available to the local governments in the region and on the website of the regional commission. Any such proposed action by a regional commission shall be submitted for review to the department. Review shall be in accordance with rules and procedures established by the department;

(4) Any conflict which remains after review pursuant to the procedures established under paragraph (3) of this subsection shall be submitted to mediation or such other form of resolving conflicts as the commissioner may deem necessary; and

(5) The department may decline to certify a local government as a qualified local government or may take or recommend action which

would reduce state or other funding for a regional commission if such local government or regional commission, as the case may be, is a party to a conflict but fails to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department and a majority of the Board of Community Affairs, reflects a good faith effort to resolve the conflict.

(e) The department shall undertake such activities as may be necessary to carry out any additional authority, duties, and responsibilities as authorized and described in Chapter 40 of this title. (Code 1981, § 50-8-7.1, enacted by Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 4/HB 1216; Ga. L. 2013, p. 1104, § 1/SB 104; Ga. L. 2018, p. 629, §§ 3-2, 4-2/SB 402.)

The 2018 amendment, effective May 7, 2018, in paragraph (b)(1), added the proviso at the end of the first sentence and added the second sentence; and added subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, “Code Section 50-40-1” was substituted for “Code Section 50-39-1” at the end of paragraph

(b)(1) and “Chapter 40 of this title” was substituted for “Chapter 39 of this title” at the end of subsection (e).

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Achieving Connectivity Everywhere (ACE) Act.’”

50-8-18. Energy efficient construction of major state-funded facility projects; short title; legislative findings; “major facility project” defined.

(a) This Code section shall be known and may be cited as the “Energy Efficiency and Sustainable Construction Act of 2008.”

(b) The General Assembly finds that the welfare of this state is enhanced by the promotion of effective energy and environmental standards for construction, rehabilitation, and maintenance of state-funded facilities and that such standards in turn improve this state's capacity to design, build, and operate high-performance buildings, contributing to economic growth, promoting job development, and increasing energy conservation.

(c) For purposes of this Code section, the term “major facility project” means a state-funded:

(1) New construction building project of a building exceeding 10,000 square feet;

(2) A renovation project that is more than 50 percent of the replacement value, as determined by the Department of Administrative Services Risk Management Division, of the facility, a change in occupancy, or any roof replacement project exceeding 10,000 square feet; or

(3) A commercial interior tenant fit-out project exceeding 10,000 square feet of leasable area where the state is intended to be the lessor of such property.

A major facility project shall not include a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and shall not include a state owned building that is on the historical registry or any local, county, or municipal building.

(d) Consistent with the intent of this Code section, the department, in consultation with the Georgia State Financing and Investment Commission, shall adopt policies and procedures as recommended standards for all buildings owned or managed by this state that:

- (1) Optimize the energy performance;
- (2) Increase the demand for construction materials and furnishings produced in Georgia;
- (3) Improve the environmental quality in this state by decreasing the discharge of pollutants from such state buildings;
- (4) Conserve energy and utilize local and renewable energy sources;
- (5) Protect and restore this state's natural resources by avoiding the development of inappropriate building sites;
- (6) Reduce the burden on municipal water supply and treatment by reducing potable water consumption;
- (7) Establish life cycle assessments as the appropriate and most efficient analysis to determine a building project's environmental performance level; and
- (8) Encourage obtaining Energy Star designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(e) All major facility projects may be designed, constructed, and commissioned or modeled to exceed the standards set forth in ASHRAE 90.1.2004 by 30 percent where it is determined by the department that such 30 percent efficiency is cost effective based on a life cycle cost analysis with a payback at no more than ten years. Commissioning or modeling must be performed by a professional engineer, design professional, or commissioning agent using software methodology approved by the Internal Revenue Service, the Department of Energy, current ASHRAE standards, or other similar methodology. For all major renovation projects, such requirements shall apply to the specific building assemblies, envelope components, and equipment involved in the project.

(f) All major facility projects shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992.

(g) To achieve sustainable building standards, construction projects may utilize a nationally recognized high performance energy modeling and environmental building rating system; provided, however, that any such rating system that uses a material or product based credit system that operates to the detriment of materials or products manufactured or produced in Georgia shall not be utilized. The department shall designate rating systems that meet these criteria and is authorized to establish its own alternative rating system. All major facility projects shall include Georgia products such that not less than 10 percent of all building materials used in a project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available in a manner consistent with the purposes of this Code section.

(h) A professional engineer, design professional, or commissioning agent shall certify that the building project's systems for heating, ventilating, air conditioning, energy conservation, and water conservation are installed and working properly to ensure that each building project performs according to the building's overall environmental design intent and operational objectives. (Code 1981, § 50-8-18, enacted by Ga. L. 2008, p. 224, § 4/SB 130; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2017, p. 774, § 50/HB 323.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Georgia State Financing and Investment Commission" for "Georgia State Finance and Investment Commission" in the introductory language of subsection (d).

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

ARTICLE 4

METROPOLITAN AREA PLANNING AND DEVELOPMENT COMMISSIONS

50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.

(a) The members of a commission for an area shall consist of:

(1) The chairman of the board of commissioners of each county within the area;

(2) The mayor of the most populous municipality within the area;

(3) From each county within the area, except the most populous county within the area, the mayor of a municipality within such county, to be designated by majority vote of the mayors (except the mayor of the most populous municipality within the area) of all municipalities lying within such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county;

(4) From the most populous county within the area, the mayor of a municipality located within the northern half of such county elected by majority vote of the mayors of all municipalities located within the northern half of such county and the mayor of a municipality located within the southern half of such county elected by a majority vote of the mayors of all municipalities located within the southern half of such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area;

(5) A member, the president, or the presiding officer of the legislative body of the most populous municipality lying within the area chosen by majority vote of the members of that legislative body; and

(6) Fifteen at-large members not holding elective or appointed public office and not employed by any of the political subdivisions of the area, who shall be elected as follows:

(A) Within ten days after a commission has been activated pursuant to Code Section 50-8-82 and within 90 days after the publication of a subsequent United States decennial census, the members of the General Assembly whose representative or senatorial districts lie wholly or partially within an area shall meet upon call by the Speaker of the House of Representatives and the President of the Senate and shall divide the area into 15 districts. Each district shall contain approximately the same population; shall consist of combinations of contiguous census tracts from the latest available United States decennial census; but may cross the boundary lines of political subdivisions; and

(B) Within ten days after the area has been so divided into districts, the public members of a commission shall meet upon call of the chairman of the county commission of the most populous county within its area and elect one resident of each district as a member of the commission.

(b) Any other provision of this article to the contrary notwithstanding, the General Assembly shall be authorized by local Act to remove any county within an area from the provisions of this article upon the recommendation of a majority of the full membership of the board of commissioners of any such county.

(c) Within 90 days after any area, county, or municipality is added to or removed from the jurisdiction of an existing commission under the provisions of paragraph (1) of Code Section 50-8-80 or subsection (b) of this Code section, the resulting area shall be redistricted and the 15 members at large shall be elected in accordance with paragraph (6) of subsection (a) of this Code section relative to redistricting after a United States decennial census. (Code 1981, § 50-8-84, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 1; Ga. L. 1988, p. 1834, §§ 2, 3; Ga. L. 1997, p. 442, §§ 2, 3; Ga. L. 2014, p. 18, § 2/SB 367.)

The 2014 amendment, effective April 10, 2014, inserted “, the president, or the presiding officer” near the beginning of paragraph (a)(5).

ARTICLE 6

OFFICE OF RURAL DEVELOPMENT;
STATE ADVISORY COMMITTEE
ON RURAL DEVELOPMENT

PART 2

RURAL DEVELOPMENT COUNCIL

50-8-150. Creation of council; members; terms; officers; regular meetings; expenses; bylaws.

Reserved. Repealed by Ga. L. 2018, p. 142, § 4/HB 951, effective July 1, 2018.

Editor’s notes. — This Code section was based on Ga. L. 1988, p. 291, § 1; Ga. L. 1992, p. 988, § 1; Ga. L. 2005, p. 143, § 2/SB 144.

Ga. L. 2018, p. 142, § 1/HB 951, not codified by the General Assembly, provides that: “The General Assembly finds that:

“(1) Since 2010 the State of Georgia has experienced tremendous job growth, adding more than 500,000 new private sector jobs;

“(2) Georgia’s economic successes during this period have resulted from a favorable tax structure and regulatory environ-

ment and aggressive economic development initiatives;

“(3) Georgia has been declared by several industry publications, including *Site Selection Magazine*, to be the best state in the nation for business for the previous four years;

“(4) This economic success has not extended into all of Georgia’s rural areas to a desired level;

“(5) As a result, Georgia’s rural areas face with challenges distinct from other regions of this state, including loss of population, insufficient health care access, poor infrastructure, diminished op-

portunity for quality education, scarcity of employment opportunities, and overall lack of economic growth;

“(6) A thorough, intensive, and systematic study of the existing issues in Georgia’s rural areas is necessary and appropriate; and

“(7) The objective of such study should be to identify policies and ideas to enhance economic opportunity across the entire state, particularly in rural areas.”

ARTICLE 11

DOWNTOWN RENAISSANCE FUND

Editor’s notes. — This article became effective April 16, 2014.

50-8-260. Definitions.

As used in this article, the term:

(1) “Department” means the Department of Community Affairs.

(2) “Fund” means the Georgia Downtown Renaissance Fund, a revolving loan fund originating low-interest loans for qualified investments in a downtown district. (Code 1981, § 50-8-260, enacted by Ga. L. 2014, p. 300, § 1/HB 128.)

50-8-261. Short title; establishment; director; application for assistance; fees; rules and regulations.

(a) This article shall be known and may be cited as the “Georgia Downtown Renaissance Fund Act.”

(b) The Georgia Downtown Renaissance Fund is established within the department for the purpose of assisting local governments, downtown development authorities, urban redevelopment authorities, special districts, and nonprofit organizations with financing and technical assistance to encourage economic and small business development, historic preservation, private investment, public improvements, leadership development, training, design assistance, and financing in the effort of improving downtown districts.

(c) The commissioner of community affairs shall serve as the director of the fund.

(d)(1) Using such funds as may be appropriated, the office may provide assistance to eligible local governments, urban redevelopment authorities, development authorities, or downtown development authorities in the form of technical assistance, loans, loan guarantees, or any combination thereof.

(2) Appropriated funds by line item in any appropriations Act for the Georgia Downtown Renaissance Fund shall be used for project

financing and be disbursed through rules and procedures promulgated by the Office of Downtown Development.

(3) The initial investment into the Georgia Downtown Renaissance Fund shall be capped on an annual basis of \$5 million per year for up to four years, not to exceed \$20 million.

(e) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the fund.

(f) Each municipal corporation in this state may make application to the department for assistance in downtown district development. A major criteria to be used in determining the amount of any financial assistance granted by the department from the fund may be the local commitment to the redevelopment of the downtown district.

(g) The department shall be authorized to charge reasonable application or service fees to offset administrative costs incurred in the administration of the fund.

(h) The department shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 50-8-261, enacted by Ga. L. 2014, p. 300, § 1/HB 128.)

ARTICLE 12

METROPOLITAN TRANSPORTATION PLANNING PROCESS FOR ATLANTA URBANIZED AREA AND ATLANTA AIR QUALITY REGION

Effective date. — This article became effective July 1, 2015.

50-8-280. Metropolitan Transportation Planning Process established; determination of regional air quality planning area; participating governmental units; funding; policy boards; conflict of laws.

(a) Contiguous local governments within which lie designated portions of the Atlanta Urbanized Area, as defined in 23 U.S.C. Section 101(a) (37), or air quality nonattainment areas, as identified under the federal Clean Air Act, 42 U.S.C. Section 7401, et seq., shall participate in a metropolitan transportation planning process through a metropolitan planning organization established by one or more units of government, or through a metropolitan planning process established through their area regional commission.

(b) The metropolitan transportation and air quality planning area for each regional commission established pursuant to Code Section 50-8-32 and metropolitan area planning and development commission established pursuant to Code Section 50-8-82 shall be defined by paragraph (1) of subsection (f) of Code Section 50-8-4.

(c) Any unit of government that is participating as a limited member of a metropolitan area planning and development commission for transportation purposes and is located outside the planning area defined by paragraph (1) of subsection (f) of Code Section 50-8-4 shall be authorized, on or after July 1, 2015, to designate the local area regional commission to serve as the metropolitan planning organization.

(d) Any unit of government that is not participating as a limited member of a metropolitan area planning and development commission for transportation purposes shall continue to perform metropolitan planning in accordance with 23 U.S.C. Section 134.

(e) Regional commissions and metropolitan area planning and development commissions shall be provided funding by the appropriate state and regional entities to develop a comprehensive transportation and air quality plan for affected local governments within the Atlanta Urbanized Area as defined by the United States Census Bureau and further defined by paragraph (1) of subsection (f) of Code Section 50-8-4.

(f) Each regional commission established pursuant to Code Section 50-8-32 and metropolitan area planning and development commission established pursuant to Code Section 50-8-82 shall establish a policy board that shall govern the transportation and air quality planning process for all affected areas, approve plans, and have equal voting representation from affected local governments.

(g) In the event of any conflict between the provisions of law governing metropolitan planning and development commissions and those governing regional commissions, the laws defined in this Code section shall control and shall govern the metropolitan transportation planning area funding and planning responsibilities. (Code 1981, § 50-8-280, enacted by Ga. L. 2015, p. 1329, § 9/SB 4.)

ARTICLE 13

GEORGIA GEOSPATIAL ADVISORY COUNCIL

Effective date. — This article became effective July 1, 2017.

50-8-300. Definitions.

As used in this article, the term:

- (1) “Commissioner” means the commissioner of community affairs.
- (2) “Department” means the Department of Community Affairs.
(Code 1981, § 50-8-300, enacted by Ga. L. 2017, p. 216, § 1/HB 183.)

Law reviews. — For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

50-8-301. Creation; coordination; meetings; role; regulations.

(a) The Georgia Geospatial Advisory Council shall be created. All data, reports, and other documents of the former Georgia Geospatial Advisory Council as such existed under the Department of Natural Resources prior to June 30, 2017, shall be transferred to the department for use by such newly created council.

(b) The department shall coordinate the recreation of the Georgia Geospatial Advisory Council. The commissioner, or his or her designee, shall coordinate with state executive branch departments and agencies to appoint members of the council, which may consist of representatives from state departments and agencies, local governments, universities, regional commissions, or any other entity the department determines to be a stakeholder active in the development or consumption of reliable geospatial resources.

(c) The council shall meet initially upon the call of the commissioner and shall elect a chairperson at the initial meeting. Subsequent meetings shall be called by the chairperson. The members of the council shall serve at the pleasure of the commissioner. Councilmembers shall receive no compensation for their services as members of the council, but their travel expenses, if any, related to the performance of their official duties may be covered by the departments, agencies, or organizations they represent.

(d) The council shall make recommendations for:

- (1) Utilizing geospatial capabilities in Georgia to meet any federal notification requirements;
- (2) Moving forward to achieve reliable governmental data interoperability and enhanced delivery of services to Georgia citizens through the geospatial approach; and

- (3) Any other aspects of data collection, information optimization, and innovation determined by the council to be necessary for the advancement of geospatial technology.
- (e) The council may closely coordinate its efforts with the Georgia Technology Authority to ensure compliance with all state and federal standards, contracts, and procedures.
- (f) Any reports generated by the council shall be made available on an annual basis by the department to the members of the General Assembly, all departments and agencies of state government, all county and municipal governments, and members of the general public by posting such reports on the appropriate state agency websites.
- (g) The department shall promulgate such rules and regulations as may be reasonable and necessary for the administration of this article. (Code 1981, § 50-8-301, enacted by Ga. L. 2017, p. 216, § 1/HB 183.)

CHAPTER 9

GEORGIA BUILDING AUTHORITY

Article 1
General Provisions

facilities on Confederate Soldiers' Home property [Repealed].

Sec.
50-9-6. Authorization for projects and

ARTICLE 1

GENERAL PROVISIONS

50-9-6. Authorization for projects and facilities on Confederate Soldiers' Home property.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-9/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Ga. L. 1955, p. 585, § 1. Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

CHAPTER 12

COMMISSIONS AND OTHER AGENCIES

Article 5

Georgia Commission on Women

Sec.
50-12-80. Creation of commission; ap-
pointments to and vacancies
in membership; staggered
terms; administration.

Sec.

50-12-134. Holocaust Memorial estab-
lished; private funding; de-
sign and placement.

cations; officers; quorum;
powers and duties.

Article 8

Georgia Commission on the
Holocaust

50-12-131. Membership; terms; qualifi-

Article 9

War of 1812 Bicentennial
Commission

50-12-140 through 50-12-147 [Repealed].

ARTICLE 5

GEORGIA COMMISSION ON WOMEN

**50-12-80. Creation of commission; appointments to and vacan-
cies in membership; staggered terms; administration.**

(a) There is created the Georgia Commission on Women. The com-
mission shall be composed of 15 members to be appointed as follows:

- (1) Five members shall be appointed by the Governor;
- (2) Five members shall be appointed by the President of the
Senate; and
- (3) Five members shall be appointed by the Speaker of the House
of Representatives.

(b) The members of the commission shall be women and men of
recognized ability and achievement. All vacancies shall be filled for the
unexpired term by the original appointing official. Except as otherwise
provided in subsection (c) of this Code section, members shall serve for
terms of four years and shall be eligible for successive appointments by
an appointing official. Any member with four consecutive unexcused
absences from regular monthly meetings may be removed from the
commission by the appointing official. Each person appointed to the
commission shall be a full-time resident of Georgia. Any member who
ceases to be a full-time resident of this state during the term of his or
her membership shall be removed from the commission and such
vacancy shall be filled by the Governor.

(c) To effect staggered terms of office for members of the commission
and effective with members appointed for terms beginning in 2000, the

Governor, the Lieutenant Governor, and the Speaker of the House of Representatives shall each appoint: two members for two-year terms of office; two members for three-year terms of office; and one member for a one-year term of office. Thereafter, all members shall be appointed to serve four-year terms of office.

(d) The commission shall be assigned to the Department of Public Health for administrative purposes only, as prescribed in Code Section 50-4-3. (Code 1981, § 50-12-80, enacted by Ga. L. 1992, p. 820, § 1; Ga. L. 2000, p. 1219, §§ 1, 2; Ga. L. 2017, p. 97, § 3/HB 198.)

The 2017 amendment, effective July 1, 2017, added subsection (d).

ARTICLE 8

GEORGIA COMMISSION ON THE HOLOCAUST

50-12-131. Membership; terms; qualifications; officers; quorum; powers and duties.

(a) There is created the Georgia Commission on the Holocaust in the executive branch of state government. The commission shall be assigned to the Department of Community Affairs for administrative purposes only.

(b) The commission shall be composed of the following members:

(1) Ex officio members as follows:

(A) The State School Superintendent or the Superintendent's designee;

(B) The chancellor of the University System of Georgia or the chancellor's designee;

(C) The executive director of the Georgia Public Telecommunications Commission or the executive director's designee; and

(D) The commissioner of veterans service or the commissioner's designee; and

(2) Public members as follows:

(A) Five public members appointed by the Governor;

(B) Five public members appointed by the Speaker of the House of Representatives; and

(C) Five public members appointed by the President of the Senate.

(c) The public members of the commission shall be residents of this state and shall be appointed with due regard for broad geographic

representation. Such public members should include but not be limited to:

(1) Individuals who have served prominently as spokespersons for or as leaders of organizations or corporations which serve members of religious, ethnic, national heritage, or social groups which were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence, and other forms of human rights violations and persecution at the hands of the Nazis and their collaborators during the Nazi era;

(2) Individuals who are experienced in the field of Holocaust education;

(3) Individuals who represent liberators of victims of the Holocaust; or

(4) Lay persons who have an interest in Holocaust education.

(d) Public members of the commission shall be appointed for terms of five years each and until their respective successors are appointed and qualified. Public members shall be eligible for reappointment. The office of any member of the commission who fails to attend more than two consecutive meetings of the commission without an excuse approved by a resolution of the commission shall become vacant. All vacancies shall be filled by appointment in the same manner as the original appointment, and the person so appointed to fill a vacancy shall serve for the remainder of the unexpired term.

(e) The commission shall have a chairperson who shall be appointed by the Governor for a term of five years and until his or her successor is appointed and qualified.

(f) Seven members of the commission shall constitute a quorum for the transaction of the business of the commission. Public members shall have the right to vote on any matter before the commission, but ex officio members and their designees shall not have the right to vote.

(g) The Speaker of the House of Representatives shall appoint one member of the majority party and one member of the minority party from the House of Representatives and the President of the Senate shall appoint one member of the majority party and one member of the minority party from the Senate to serve as legislative oversight to the commission. (Code 1981, § 50-12-131, enacted by Ga. L. 1998, p. 880, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2007, p. 47, § 50/SB 103; Ga. L. 2018, p. 722, § 1/SB 356.)

The 2018 amendment, effective May 7, 2018, substituted “Department of Community Affairs” for “Office of the Secretary of State” in the second sentence of subsec-

tion (a); and substituted the present provisions of subsection (g) for the former provisions, which read: “The Speaker of the House of Representatives shall ap-

point a member of the House of Representatives and the President of the Senate shall appoint a member of the Senate to serve as advisers to the commission.”

50-12-134. Holocaust Memorial established; private funding; design and placement.

(a) The Georgia Commission on the Holocaust shall design, procure, and place in a prominent location a Georgia Holocaust Memorial to recognize and commemorate the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II. Such project shall be subject to the availability of private funds for such purpose.

(b) The monument provided for in subsection (a) of this Code section shall be designed and placed by the commission. (Code 1981, § 50-12-134, enacted by Ga. L. 2018, p. 722, § 2/SB 356.)

Effective date. — This Code section became effective May 7, 2018.

ARTICLE 9

WAR OF 1812 BICENTENNIAL COMMISSION

50-12-140 through 50-12-147.

Repealed by Ga. L. 2008, p. 730, § 1/HB 953, effective December 31, 2015.

Editor’s notes. — This article was based on Ga. L. 2008, p. 730, § 1/HB 953.

FURMAN SMITH LAW LIBRARY



3 5201 01126 8805